

**FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Appeal of

Hearing Examiner File:

**QUEEN ANNE
COMMUNITY COUNCIL**

W-18-009

of the adequacy of the Final Environmental
Impact Statement (FEIS) issued by the
Seattle City Council

Introduction

The Respondent, the Seattle City Council (“City”), is studying possible adoption of legislation pertaining to accessory dwelling units in single-family zones. The City published a Final Environmental Impact Statement (“FEIS”) on October 4, 2018 to consider the potential significant adverse environmental impacts of the proposal. On October 18, 2018, the Queen Anne Community Council (“Appellant”) appealed the FEIS.

The Deputy Hearing Examiner (“Examiner”) entered an order of partial dismissal of Appellant’s issues on January 30, 2019. TreePAC, self-described as “a Seattle-based membership based political action committee that has consistently supported the retention or mitigation of trees within Seattle. . . ,”¹ filed a motion to intervene on March 14, 2019. TreePAC’s (“Intervenor’s”) motion was granted by the Examiner on March 21, 2019.

The Examiner held a public hearing on the appeal on March 25, 26, 27, 28, and 29, 2019. The City, the Appellant, and the Intervenor participated in the proceeding. The City was represented by Tadas Kisielius and Clara Park, attorneys-at-law. The Appellant was represented by Jeffrey Eustis, attorney-at-law. The Intervenor was represented by Richard Ellison, vice president of TreePAC. For purposes of this decision, all section numbers refer to the Seattle Municipal Code (“SMC” or “Code”) unless otherwise indicated. After considering the evidence in the record, the Examiner enters the following findings of fact, conclusions and decision on the appeal.

Findings of Fact

1. The Code defines an “accessory dwelling unit” (“ADU”) as one or more rooms that: 1) “are located within an owner-occupied dwelling unit, or within an accessory structure on the same lot as an owner-occupied dwelling unit;” 2) meet certain Code standards; 3) “are designed, arranged, and intended to be occupied by not more than one household as living accommodations independent from any other household;” and 4) “are so occupied or vacant.”² A Detached Accessory Dwelling Unit (“DADU”) is a secondary unit located in

¹ *TreePAC Motion to Intervene* at 1 (filed March 14, 2019).

² SMC 23.84A.002 “A” and SMC 23.84A.002 “R”.

a separate structure from the principal dwelling unit.³

2. In 2016, the Office of Planning and Community Development (“OPCD”) prepared a draft ordinance that would amend existing land use code provisions on ADUs and DADUs. That proposal was described as:

Propos[ing] to change regulations in the Land Use Code to remove regulatory barriers to the creation of ADUs in single-family zones. . . The proposal involves several Land Use Code changes, including allowing two ADUs on some lots, changing the existing off-street parking and owner-occupancy requirements, and changing some development standards that regulate the size and location of DADUs.⁴

3. The City issued a Determination of Nonsignificance (“DNS”) on the proposal as part of its environmental review process under the State Environmental Policy Act (“SEPA”). The DNS was timely appealed by the same Appellant as in this matter, the Queen Anne Community Council. Hearing Examiner Sue Tanner reversed the DNS and remanded the matter to OPCD, requiring an Environmental Impact Statement (“EIS”) be prepared.⁵ Examiner Tanner determined that:

- The proposed legislative changes would create a regulatory environment that is likely to generate entirely different impacts than considered in the DNS process, what was referred to by an expert witness as “a fundamental change in the land use form.”
- The evidence showed that the indirect impacts of the legislation would adversely affect housing and cause displacement of populations. As a significant adverse environmental impact, Examiner Tanner required these impacts to be studied in an EIS in the context of the development/economic environment that would be created by the proposal.
- The City’s documents did not accurately depict the impact of the increased height, bulk, and scale that would be created by the proposal. Examiner Tanner ordered that on remand, the analysis of the height, bulk, and scale impacts be done in the context of the actual development environment created by the legislation and include renderings that accurately represent at least the maximum height, bulk, and scale that could be constructed on at least one full block and include lots as small as 3200 square feet.
- The determination of parking impacts was not based on sufficient evidence to evaluate those impacts, and the Appellant demonstrated more than a moderate impact on parking, and therefore it needed to be examined in an EIS.
- The evidence in the record was insufficient to evaluate whether public

³ City of Seattle, *Accessory Dwelling Units Final Environmental Impact Statement* at 1-2 (October 4, 2018) (“FEIS”).

⁴ *Id.*

⁵ *In the Matter of the Appeal of Queen Anne Community Council*, W-16-004 at 14 (Dec. 13, 2016).

services and facilities, specifically the road and utility systems, including stormwater, are sized to support the likely increase in density and attendant increase in impermeable surfaces that could result from the proposal. The Examiner required that issue to be studied in an EIS.⁶

Proposal Objective

4. The City Council adopted Resolution 31547 on September 29, 2014 directing study of ADU development in the City and a recommendation for possible changes to the legislation that would increase the number of ADUs within the City.⁷ Possible features of this future legislation are analyzed in the FEIS as part of a nonproject proposal.⁸
5. The proposal also builds off the work of the Housing Affordability and Livability Agenda (“HALA”) Advisory Committee, whose final recommendations identified measures to boost ADU production as one of several strategies for increasing housing choices in Seattle.⁹
6. The proposal also seeks to implement policies of the Seattle Comprehensive Plan related to the development of ADUs, specifically the following:

Land Use Policy 7.5 Encourage accessory dwelling units, family-sized units, and other housing types that are attractive and affordable, and that are compatible with the development pattern and building scale in single-family areas in order to make the opportunity in single-family areas more accessible to a broad range of households and incomes, including lower-income households.

Land Use Policy 7.12 Emphasize measures that can increase housing choices for low-income individuals and families when considering changes to development standards in single-family areas.¹⁰

7. As stated in the FEIS, the objectives of the proposal are to:
 - Remove regulatory barriers to make it easier for property owners to permit and build [Attached ADUs (“AADUs”)] and DADUs

⁶ *Id.* at 11-14.

⁷ Exh. 31.

⁸ “‘Nonproject’ means actions which are different or broader than a single site-specific project, such as plans, policies, and programs.” SMC 25.05.774. “‘Proposal’ means a proposed action. . . . A proposal exists at the state in the development of an action when an agency . . . has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and the environmental effects can be meaningfully evaluated A proposal may therefore be a particular or preferred course of action or several alternatives.” SMC 25.05.784. “Action” is defined at SMC 25.05.704.

⁹ *FEIS* at 1-2 through 1-3.

¹⁰ *Id.* at 1-3.

- Increase the number and variety of housing choices in single-family zones¹¹

EIS Process

8. The Seattle City Council conducted a scoping process for the EIS. The process was intended to collect input on the following topics:
 - A reasonable range of alternatives;
 - Potentially affected resources and the extent of analysis for those resources;
 - Measures to avoid, minimize, and mitigate the impacts of the proposal;
 - Potential cumulative impacts.¹²
9. The City conducted a 45-day scoping period, and hosted two public scoping meetings on October 17, 2017, and October 26, 2017, at different locations in neighborhoods affected.¹³
10. The City found no additional topics for the EIS beyond those identified in Examiner Tanner's decision. The subjects focused upon in the EIS are:
 - Housing and Socioeconomics (Section 4.1 of the FEIS);
 - Land Use (Section 4.2 of the FEIS);
 - Aesthetics (Section 4.3 of the FEIS);
 - Parking and Transportation (Section 4.4 of the FEIS); and
 - Public Services and Utilities (Section 4.5 of the FEIS).¹⁴
11. The Draft EIS was issued on May 10, 2018. Its availability was announced in the City's Land Use Information Bulletin and in the Daily Journal of Commerce.¹⁵ Emails were also sent to the listserv developed during the scoping process. A public hearing was held on May 31, 2018. The public comment period was open from May 10, 2018 to June 25, 2018.¹⁶
12. The Draft EIS contained three Alternatives: Alternative 1 (no-action), Alternative 2 (proposed Land Use Code changes developed in 2016), and Alternative 3 (considers more modest adjustments to the Land Use Code).¹⁷ The specific parameters considered under Alternative 3 include:
 - retaining the owner-occupancy requirement and eight-person maximum household size limit,
 - adding incentives for affordable housing,
 - requiring an off-street parking space for lots with a second ADU, and

¹¹ *Id.*

¹² *Id.* at 1-4 through 1-5.

¹³ *Id.* at 1-5.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 1-5 through 1-6.

¹⁷ *Id.* at 1-7.

- incorporating maximum floor area ratio (“FAR”) limits.¹⁸
13. The Seattle City Council issued a Final EIS (“FEIS”) on October 4, 2018. The FEIS analyzes the three alternatives included in the Draft EIS and an additional Preferred Alternative. The FEIS describes the Alternatives as follows:

Alternative 1 (No-action) assumes that the City makes no changes to the Land Use Code related to ADUs. Alternative 2, Alternative 3, and the Preferred Alternative all assume implementation of Land Use Code changes that would increase the number of ADUs produced in Seattle’s single-family zones. All action alternatives address regulations and policies frequently cited as barriers to creation of ADUs.

Alternative 2, Alternative 3, and the Preferred Alternative differ in the scale and focus of the proposed changes. Alternative 2 represents a broad range of changes to the Land Use Code intended to remove regulatory barriers to the creation of ADUs, similar to the draft proposal analyzed in May 2016 prior to the Hearing Examiner’s decision. Alternative 3 considers more modest adjustments to the Land Use Code that emphasize maintaining the scale of existing development in single-family zones. The Preferred Alternative combines elements of Alternatives 2 and 3. Its composition reflects analysis contained in the Draft EIS and comments we received on that document during the comment period.¹⁹

Summary of Key Features of the Alternatives

14. The FEIS summary provides comparisons of the alternatives based on key features that differentiate each of the proposals. The list below identifies each of the relevant features.²⁰

A. Number of ADUs on lots in single-family zones:

- Alternative 1: Lots in single-family zones can have one AADU or a DADU, but not both;
- Alternative 2: Lots in single-family zones can have an AADU and a DADU;
- Alternative 3: Lots in single-family zones can have an AADU and a DADU or two AADUs;
- Preferred Alternative: Lots in single-family zones can have an AADU and a DADU or two AADUs. A second ADU can only be added if the lot has been in the same ownership for at least a year.

¹⁸ *Id.*

¹⁹ *Id.* at 1-7 through 1-8.

²⁰ *Id.* at 2-8 through 2-17. All information in Finding 14 derives directly from the FEIS.

B. Off-street parking requirements:

- Alternative 1: One off-street parking space is required for an AADU or a DADU unless the lot is in an urban village;
- Alternative 2: No off-street parking is required;
- Alternative 3: No off-street parking is required for one ADU. One off-street parking space for a second ADU;
- Preferred Alternative: No off-street parking is required.

C. Owner-occupancy requirements:

- Alternative 1: An owner must occupy either the main house or the AADU/DADU for six months of the year;
- Alternative 2: No requirement for the owner to occupy the main house, the AADU, or the DADU;
- Alternative 3: No change from Alternative 1;
- Preferred Alternative: No requirement for an owner to occupy the house, AADU, or DADU. A minimum of one year of continuous ownership is required to establish a second ADU on a lot that already has an ADU.

D. Minimum lot size for a DADU:*

- Alternative 1: 4,000 square feet;
- Alternative 2: 3,200 square feet;
- Alternative 3: 3,200 square feet;
- Preferred Alternative: 3,200 square feet.

**No change in minimum lot size to create a new single-family lot through subdivision.*

E. Maximum gross floor area:

- Alternative 1: AADU is 1,000 square feet, including garage and storage areas, and DADU is 800 square feet, including garage and storage areas;
- Alternative 2: AADU is 1,000 square feet, excluding garage and storage areas, and DADU is 1000 square feet, excluding garage and storage areas;*
- Alternative 3: AADU is 1,000 square feet, including garage and storage areas, and DADU is 1000 square feet, including garage and storage areas;*
- Preferred Alternative: AADU is 1,000 square feet, excluding garage and storage areas, and DADU is 1000 square feet, excluding garage and storage areas.*

** An AADU or DADU may exceed 1000 square feet if the portion of the structure in which the ADU is located existed on December 31, 2017, and if the entire ADU is located on one level.*

F. Maximum height:

- Alternative 1: No change from existing height limits, which vary by lot width and range from 15 to 23 feet;
- Alternative 2: Height limits are one to three feet higher than existing units, depending on lot width, and allow one to two additional feet for a DADU that incorporates green building standards;
- Alternative 3: Height limits are one to three feet higher than existing units, depending on lot width;
- Preferred Alternative: Height limits are one to three feet higher than existing units, depending on lot width, and allow one to two additional feet for a DADU that incorporates green building strategies.

G. Lot coverage: Current regulations for lot coverage would not change. For lots at or greater than 5000 square feet, lot coverage is 35 percent of lot area; for lots less than 5000 square feet, lot coverage is 15 percent of the lot area plus 1000 square feet.

H. Rear yard coverage:

- Alternative 1: 40 percent of a rear yard can be covered by a DADU and other accessory structures (like a garage or shed). This limit applies in addition to the overall lot coverage limit;
- Alternative 2: 60 percent of a rear yard can be covered by a DADU and other accessory structures, if the total height of the DADU is 15 feet or less. Rear yard coverage for structures other than a DADU cannot exceed 40 percent;
- Alternative 3: Same as Alternative 2;
- Preferred Alternative: 60 percent of or a rear yard can be covered by a DADU whose total height is no more than 15 feet, subject to limitations on tree removal. Rear yard coverage for structures other than a DADU cannot exceed 40 percent.

I. Roof features:

- Alternative 1: No exceptions for roof features on accessory structures is allowed;
- Alternative 2: Height limit exceptions are allowed for projections like dormers that add interior space, subject to the provisions applicable to single-family houses;
- Alternative 3: Same as Alternative 2;
- Preferred Alternative: Same as Alternative 2.

J. Location of DADU entry:

- Alternative 1: DADU entrances cannot face the nearest side lot line or rear lot line unless the lot line abuts an alley or other public right of way;

- Alternative 2: DADU entrances can be on any façade if they are ten feet from the lot line and if located on the facades facing the nearest side lot line or rear lot line (unless abutting right-of-way);
- Alternative 3: Same as Alternative 2;
- Preferred Alternative: Same as Alternative 2.

K. Minimum household size:

- Alternative 1: Any number of related people, or up to eight unrelated people, can live on lots in single-family zones including in an AADU or DADU;
- Alternative 2: Any number of related people, or up to eight unrelated people, can live on lots in single-family zones including in an AADU or DADU. If the lot has an AADU and a DADU, the limit is 12;
- Alternative 3: Same as Alternative 1;
- Preferred Alternative: Same as Alternative 2.

L. Incentives for affordable housing:

- Alternative 1: No incentives for affordable housing apply to creation of ADUs on lots in single-family zones;
- Alternative 2: Same as Alternative 1;
- Alternative 3: Incentives for affordable housing apply when a property owner applies for a permit to construct a second ADU on a lot that already has one ADU. The affordability contribution is equal to the Mandatory Housing Affordability (“MHA”) requirements for zones with an (M) suffix in medium areas as outlined in Section 23.58C of the Land Use Code. This equates to an affordability contribution of \$13 per square foot of gross floor area in the second ADU.
- Preferred Alternative: Same as Alternative 1.

M. Reduced predevelopment costs: None for any alternative; and

N. Maximum floor area ratio (“FAR”) limit:

- Alternative 1: No FAR limit on single-family zones. The maximum size for the main house is effectively set by the yard requirements, height limit, and lot coverage limit. ADUs are subject to the maximum size limits described above;
- Alternative 2: Same as Alternative 1;
- Alternative 3: ***New construction:*** FAR limits apply to development in single-family zones. New houses (i.e., principal structures) are subject to a FAR limit of 0.5 or 2,500 square feet, whichever is greater. Below-grade floor area and floor area in DADUs is exempt. ADU size limits apply. ***Existing houses:*** Existing lots in single-family zones exceeding the FAR or 2,500 square-foot limits can convert existing space to an AADU and add a DADU subject to the size limit above;

- Preferred Alternative: Same as Alternative 3.

15. The Appellant filed an appeal of the adequacy of the FEIS on October 18, 2018. The City filed a motion to for partial dismissal on November 30, 2018. As a result, the Examiner dismissed Claim 2.1 and eliminated portions of Claims 2.2, 2.3, and 2.15. TreePAC's motion to intervene was granted by the Examiner on March 21, 2019, with the limitation that TreePAC could not introduce any witnesses or exhibits into the proceeding, nor could it raise any new issues.

Summary of Impacts Disclosed by the FEIS and Discussed at the Hearing

A. Socioeconomic Impacts

16. Examiner Tanner indicated in her decision that the evidence in the record in the previous appeal showed “that the indirect impacts of the legislation would adversely affect housing and cause displacement of populations.”²¹ She identified these impacts as significant and ordered that these impacts be studied in the EIS in the context of the development/economic environment that would be created by the proposal.
17. The FEIS addresses socioeconomics in Chapter 4.1 and in more detail in Appendix A. The questions addressed by the FEIS are stated as the following:

Underlying Development Economics. How might the proposed changes alter the underlying real estate economics in single-family zones? Could the proposed changes make property in single-family zones more attractive as rental investments rather than as owner-occupied assets?

ADU Production. How many ADUs could be created given the proposed policy changes in each alternative?²²

18. The FEIS states that it considered the following types of impacts from the proposed alternatives:

Affordability. What impacts could the proposed changes have on housing affordability?

Displacement. How might the potential housing and socioeconomic impacts vary by neighborhood? What are the potential impacts on marginalized populations (low-income people, people of color, and non-native English speakers)?²³

²¹ *In the Matter of the Appeal of Queen Anne Community Council*, W-16-004 at 11-12 (Dec. 13, 2016).

²² *FEIS* at 4-3.

²³ *Id.*

i. Affordability and Displacement-Background

19. The FEIS provides an extensive discussion of affordability. According to the FEIS, housing affordability is typically expressed as a measure of housing costs in relation to household income under standards developed by the U.S. Department of Housing and Urban Development (“HUD”). The HUD standard states that housing is affordable if housing costs, including basic utilities, amount to 30 percent or less of a household’s gross income. If those costs are over the 30 percent mark, the household may have difficulty affording necessities such as food, clothing, transportation, and medical care. Those households are considered “cost-burdened.” If those costs are over 50 percent, the household is considered “severely cost-burdened.”²⁴
20. According to the FEIS, HUD estimates that 37 percent of all households in Seattle are either cost-burdened or severely cost-burdened. Renter households are more likely to be cost-burdened than owner-occupied households, and nearly twice as likely to be severely cost-burdened. The data further indicates that 68 percent of households with incomes less than 80 percent of the area median income (“AMI”) are cost-burdened or severely cost-burdened.²⁵
21. The FEIS also indicates there is a disparity in cost burden among households of different race and ethnic backgrounds. According to the data, two-thirds of households with a non-Hispanic white householder are not cost burdened;²⁶ in comparison, over half of households with a Black or African American householder experience some level of housing cost burden.²⁷
22. The FEIS states that the affordability of ownership housing for a four-person household in Seattle has declined dramatically in the last ten years. It indicates that since 2016, only about 12 percent of single-family homes sold in Seattle were at a price affordable to a four-person household earning 80 percent of AMI, and only one quarter of the homes sold were at a price affordable to a four-person household earning 100 percent of AMI.²⁸
23. The affordability of rental housing has also declined, as documented by the FEIS. According to census tract data, 19 percent of detached one-unit structures are renter occupied. In 2016, the City analyzed the affordability of unsubsidized occupied rental housing. According to the data, median rent for a three-bedroom single-family house was \$2892 per month, which would require a household income of at least 123 percent of AMI to be considered affordable. A single-family home renting at the 25th percentile market rate²⁹ is unaffordable in Seattle for those earning incomes of 80 percent or less of AMI,

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 4-6.

²⁷ *Id.*

²⁸ *Id.* at 4-7.

²⁹ The “25th percentile” is a common marker of rent for the least expensive homes on the market, indicating the point at which 25 percent of the units rent for less and 75 percent rent for more.

according to the data.³⁰

24. The FEIS defines housing displacement as a process wherein households are compelled to move from their homes involuntarily due to the termination of their lease, rising housing costs, or other factors. Three different types of displacement occur in Seattle, according to the FEIS: physical, economic, and cultural. Physical displacement occurs as the result of eviction, acquisition, rehabilitation, or demolition of property, or the expiration of covenants on rent or income-restricted housing. Economic displacement occurs when residents can no longer afford rising rents or costs of homeownership like property taxes. Finally, cultural displacement occurs when residents are compelled to move because the people and institutions that make up their cultural community have left the area.³¹
25. The FEIS states that a major cause of displacement in single-family neighborhoods is rehabilitation of existing buildings to attract higher-income tenants. According to the FEIS, single-family houses that are rehabilitated, expanded, or demolished and replaced with larger houses tend to result in more expensive units and do not increase the supply of housing. The FEIS evaluates potential impacts on physical displacement by considering whether the alternatives would change the likelihood of various development outcomes, particularly demolishing existing homes.³²
26. The FEIS also discusses economic displacement. Economic displacement can be caused by regulatory changes, such as limiting the number of housing units in a particular area to increase competition for homes. That competition then puts upward pressure on the cost of housing, making it difficult for residents to continue to afford to live there. The FEIS states that it evaluates economic displacement by examining how the alternatives could affect the cost and availability of housing in the study area.³³
27. Finally, the FEIS discusses cultural displacement. Cultural displacement occurs when people choose to move because their cultural community has disappeared from an area. This occurs when culturally-related businesses and institutions leave an area. According to the FEIS, people of color, immigrants, and refugees have faced significant barriers to accessing housing in parts of the study area. Social networks within racial or ethnic communities often take on substantial importance and social cohesion plays a discernible role in decisions about locating to a particular area. The FEIS indicates that because particular cultural communities may not recur across the region, the presence of these cultural assets in Seattle is an important anchor to those who face additional barriers in accessing housing. When those assets relocate or cease to exist in a neighborhood, according to the FEIS the community members who frequented those places leave the area as well. The FEIS states that some neighborhoods, including the Central Area, Beacon Hill, and Columbia City, experienced substantial decline in the percentage share of racial and ethnic minorities between 1990 and 2010. While acknowledging that cultural

³⁰ *Id.* at 4-9.

³¹ *Id.* at 4-10 through 4-12.

³² *Id.* at 4-11.

³³ *Id.*

displacement is difficult to measure, the FEIS concludes that the proposal will not have impacts on these cultural institutions, since the study area is single-family zones. It posits that it is possible that policies to encourage increasing ADU production could allow more households to create ADUs for rental income to accommodate changing household sizes and needs.³⁴

ii. FEIS Methodology for Assessing Socioeconomic Impacts

28. The FEIS uses two methodologies for analyzing socioeconomic impacts: the highest and best use analysis and the forecast model. The highest and best use analysis evaluates the reasonable use of a property based on what is physically possible, financially feasible, and results in the highest “residual land value.”³⁵ The forecast model analyzes historical data on ADU development and redevelopment of single-family lots and makes adjustments to input variables to forecast the potential impacts of the various alternatives.³⁶

Highest and Best Use Analysis

29. The highest and best use analysis in the FEIS uses the metric of “residual land value” as stated above. The FEIS defines the residual land value (“RLV”) as the measure of a developer’s land budget for a particular project, after taking into account expected costs, including developer profit and revenues. A higher residual land value for a particular use indicates the developer can afford to pay more for the land. According to the FEIS, this analysis provides information on how the various alternatives could change real-estate economics in the area, but it does not predict specific development outcomes on a particular parcel.³⁷
30. In the FEIS, RLV is measured through a pro forma analysis. The pro forma analysis, as used by the FEIS, makes inputs and assumptions about market conditions, parcel characteristics, and land use scenarios outcomes to calculate RLV for more than 8000 development outcomes.³⁸
31. The FEIS also used a typology approach, rather than studying specific neighborhoods.³⁹ It classified each residential neighborhood into one of three different neighborhood profiles (higher, medium, and lower price) to account for varying market conditions across the study area. It also includes parcel types of four different lot sizes (3,200, 2,750, 5,000, and 7,200 square feet) each with specified lot widths, lot depths, footprints, living space size, size of accessory structures, size of daylight basements (assumed in all cases), and number of off-street parking spaces (two in every type). From those assumptions, the FEIS drew conclusions regarding lot coverage and footprint available for DADU structures when keeping the main house. The characteristics of each parcel set the upper bounds on what

³⁴ *Id.* at 4-11 through 4-12.

³⁵ *Id.* at 4-13.

³⁶ *Id.* at 4-18.

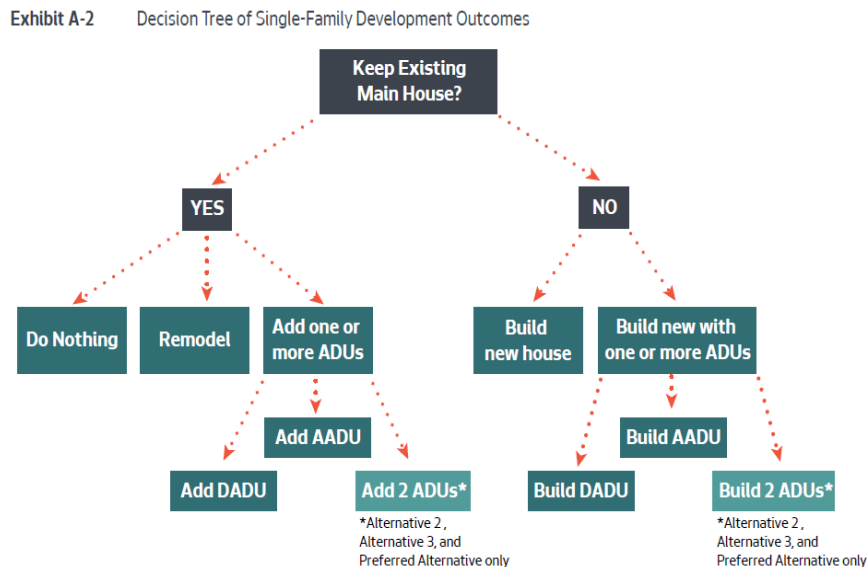
³⁷ *Id.* at 4-13.

³⁸ *Id.* at 4-14.

³⁹ *Id.*

can be built.⁴⁰

32. The FEIS alternatives present different options property owners might choose for redevelopment. A property owner could keep an existing lot and do nothing, remodel, add an AADU, add a DADU, or add both an AADU and a DADU. The highest and best use analysis determines which outcome is maximally productive from a financial standpoint under the model.⁴¹
33. The model analyzed 44 legally permissible development outcomes. The FEIS states that all of these outcomes can be categorized into two main types: outcomes that demolish the existing home and outcomes that retain the existing home.⁴² The FEIS further looks at the owner's options of what to do with the property with respect to each development outcome, including sale of the entire property, long-term rental, or short-term rental.⁴³ The FEIS graphic⁴⁴ below illustrates this analysis:



34. To analyze profitability in Seattle today, the pro forma model considered four valuation options for each outcome:
- All units (including any ADUs) are valued based on total for-sale price;
 - All units are used as long-term rentals (including the main house);
 - The main house is valued based on its for-sale price, and ADUs are used as long-term rentals; and

⁴⁰ *Id.* at 4-14-15.

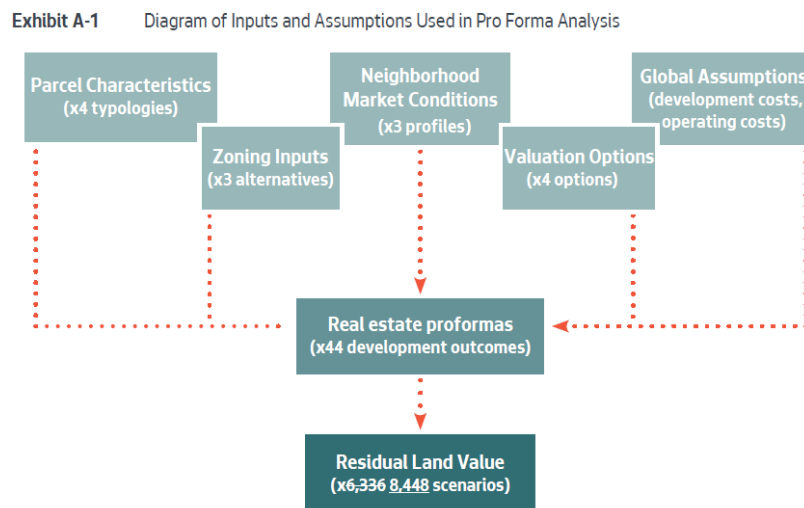
⁴¹ *Id.* at 4-15 and 4-16.

⁴² *Id.* at 4-16.

⁴³ *Id.* at 4-17.

⁴⁴ *Id.* at A-10.

- The main house is valued on its for-sale price, and one ADU is used as a short-term rental.⁴⁵
35. The pro forma model reflects current Land Use Code regulations in Alternative 1, the no-action alternative. It also considers proposed changes under Alternative 2, Alternative 3, and the Preferred Alternative. The zoning inputs include required setbacks, maximum lot and rear yard coverage, required parking spaces, allowed number of ADUs, allowed size of ADUs, and owner-occupancy requirements.⁴⁶
36. The pro forma model also considers development and operating costs, including the construction costs of building an AADU or a DADU, permitting fees, architectural and engineering fees, developer fees, and any investment returns associated with rental fees. The FEIS incorporates anticipated DADU cost reductions in all alternatives to reflect possible future efforts by the City to reduce costs. These cost reductions are applied across all alternatives.⁴⁷
37. The final FEIS analysis puts all the pieces together and models each combination of inputs (parcel typology, alternative, neighborhood profile, and valuation) for each development outcome. This analysis resulted in RLV outputs that could be compared across valuation options and alternatives.⁴⁸ The following graphic is Exhibit A-1 to Appendix A of the FEIS:⁴⁹



The Forecast Model

38. The forecast model is used by the FEIS in addition to the highest and best use analysis to attempt to account for historical rates of ADU production and how policy changes may

⁴⁵*Id.* at 4-17.

⁴⁶*Id.*

⁴⁷*Id.*

⁴⁸*Id.*

⁴⁹*Id.* at A-9.

affect them. The need for the forecast model as part of the socioeconomic analysis is described as follows by the FEIS:⁵⁰

While the pro forma analysis helped us understand the most profitable outcomes, it did not necessarily reflect the real-world decisions that people make. People build ADUs for several reasons unrelated to profit, including to gain additional living space or to house a family member. Therefore, we developed a forecast model that allows us to analyze past decisions and trends to determine the factors that affect the likelihood that a parcel will add an ADU and to estimate the potential impacts of the specific policy changes. By adjusting the input variables in the model, we can forecast the potential impacts of Alternative 2 and 3 and the Preferred Alternative on the number of ADUs built. We also considered how many parcels would have no change, how many homes would be demolished and rebuilt under each alternative, and how these outcomes might vary by neighborhood and parcel size.

39. The FEIS uses a “multinomial logit model”⁵¹ to estimate ADU production through analyzing past development events and determining the factors that affect the likelihood that a parcel adds an ADU or is demolished. The model accounts for the potential removal of the owner-occupancy requirement in some alternatives, which currently restricts the number of properties that are eligible to add an ADU.⁵²
40. The first step in the model is to estimate the development outcome for each parcel in the historical database that did develop an ADU in a given year. The FEIS analyzes King County Assessor’s data and the City of Seattle permit data for 2010-2017. These sources provided parcel characteristics, building characteristics, and information about when properties added ADUs or were redeveloped. The model analyzed the following factors:⁵³
- Neighborhoods
 - Topography
 - Square footage of total living space (before and after a teardown, if applicable)
 - Age of the home
 - Whether the home has a daylight basement

⁵⁰ *Id.* at 4-18.

⁵¹ According to the FEIS:

A multinomial logit model is a type of behavioral econometric model that allows us to analyze past decisions and trends to determine the factors that make a parcel more or less likely to add an ADU. By incorporating information on parcels, neighborhoods, and macroeconomic trends, this model predicts the likelihood (as a probability) that every parcel in the study area in single-family use will be modified to incorporate an AADU or DADU or be torn down. This type of model is well suited to evaluating the potential impacts of the proposed alternatives because it accounts for historic rates and characteristics of ADU production. It also allows us to quantitatively estimate the potential impact of specific policy changes.

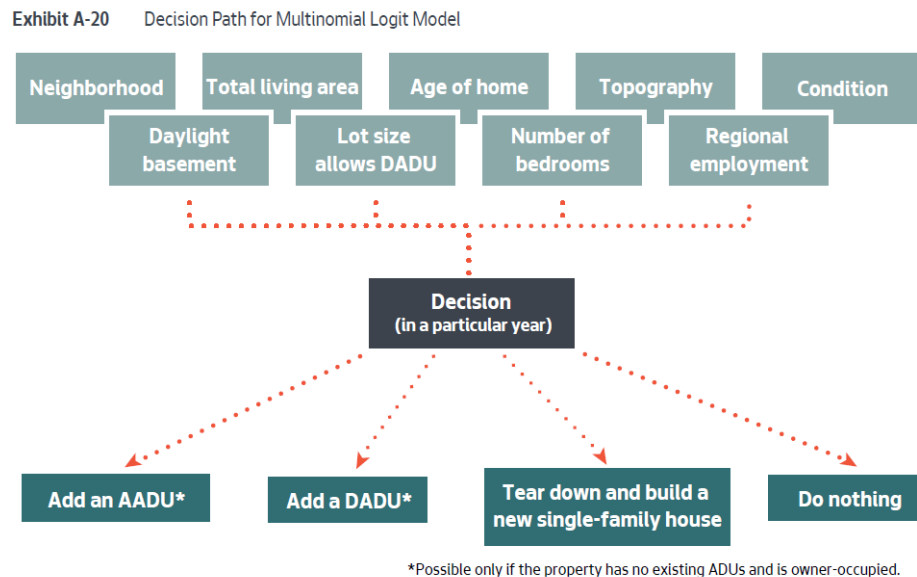
Id. at A-32.

⁵² *Id.* at 4-18 through 4-19.

⁵³ *Id.* at 4-19.

- Number of bedrooms
- Assessed condition of the home
- Whether the lot size allows for a legal DADU
- Total regional employment for the year (Puget Sound Regional Council 2015)

41. In the second step of the model, the FEIS develops a baseline forecast for ADU production in Alternative 1 (no-action), based on the first-step analysis. By updating variables such as age of the home and changes in the regional economy, the model recalculates parcel-level possibilities. The model is illustrated in the FEIS graphic below:⁵⁴



42. The third step of the analysis is to develop a forecast of ADU production in Alternatives 2 and 3 and the Preferred Alternative. Where a proposed policy change modifies a variable in the model, it is updated to reflect the change and recalculate the new probabilities for each alternative. In particular, two elements in the behavior model are manipulated: 1) minimum lot size requirement for adding a DADU and 2) maximum FAR for new construction. For Alternative 2 and the Preferred Alternative, it also modified the universe of parcels eligible to add an ADU by applying the ADU forecast model to all parcels (including renter-occupied parcels).⁵⁵
43. According to the FEIS, a number of the proposed policy changes cannot be accounted for in the historical data, including the construction of two ADUs on one lot. For those policy changes, the FEIS uses a different modeling approach, the count data model, relying on the inputs to the multinomial logit model. Using the historical data, the FEIS predicted the baseline number of ADUs to be constructed. Although each parcel has only one ADU, the count data model relaxes this constraint to assume that each parcel could have multiple ADUs. In the baseline model, this approach predicts the same number of ADUs that were

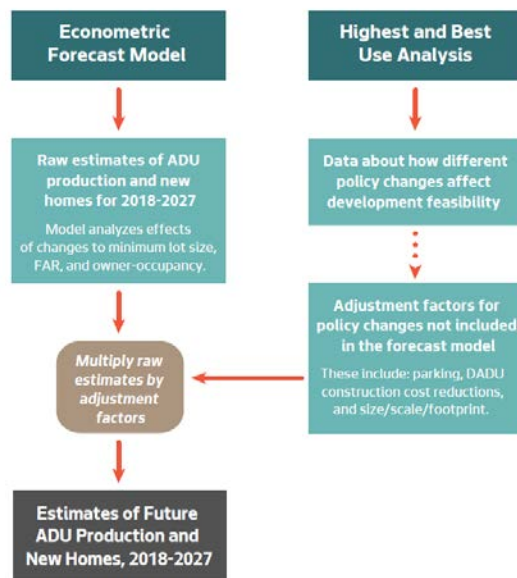
⁵⁴ *Id.* at A-34.

⁵⁵ *Id.* at 4-20.

actually built over that period. However, when modified to evaluate the impact of the different policy alternatives, the model predicts the unconstrained total number of ADUs added in a given year.⁵⁶

44. Through a number of assumptions, the FEIS predicts the estimate of the following for each alternative from 2018 through 2027:⁵⁷
- The total number of ADUs built in each alternative
 - The number of parcels that build at least one ADU
 - The number of parcels that build exactly one AADU
 - The number of parcels that build exactly one DADU
 - The number of parcels that build two ADUs.
45. Appendix A to the FEIS and Chapter 4.1 both stress that the results of this modeling are predicated on a number of assumptions that were required because historical data is not available to gauge the effect of the various alternatives.⁵⁸ Those assumptions include the number of parcels that would build two ADUs and changes to maximum household size, parking requirements, maximum DADU size, and DADU construction cost. To compensate for this limitation and to establish upper bounds for the number of ADUs created, it adjusts the modeled estimates based on the results from the pro forma analysis. This analysis is depicted in the FEIS graphic below:⁵⁹

Exhibit 4.1-12 Process for Estimating ADU Production and New Single-Family Development



⁵⁶ *Id.* at A-38.

⁵⁷ *Id.* at A-41.

⁵⁸ *Id.* at 4-20 through 4-21 & A-41.

⁵⁹ *Id.* at 4-21.

iii. Results

Pro Forma Results: Highest and Best Use

46. The results of this analysis are provided in Exhibit 4.1-13 of the FEIS on page 4-27. Generally, the FEIS indicates that in Alternative 1, the no-action alternative, the highest and best use is to demolish the present structure and rebuild the largest possible house. However, for larger parcels (over 5000 square feet) and for all parcel sizes in lower-priced neighborhoods, the FEIS states that the highest residual land value would result from keeping the existing house and adding an AADU. According to the FEIS, in the action alternatives (2, 3, and Preferred), fewer parcel types would have a highest and best use of demolishing the existing structure and building a large house. The FEIS indicates that compared to Alternative 1, the Preferred Alternative and Alternative 2 increase the relative feasibility of keeping the house and adding one or more ADUs.⁶⁰

Pro Forma Results: Valuation Options

47. The FEIS indicates that in Alternative 1, the no-action alternative, a house that is a long-term rental is the least feasible option. The highest valuation option comes from sale of the entire parcel, treating the property's entire floor area (including any ADUs) as one large, for-sale unit, except for small parcels in lower-priced neighborhoods and large parcels in medium neighborhoods. The FEIS concludes that this result shows that single-family houses and ADUs would be generally more valuable on the for-sale market than as rental properties in all alternatives.⁶¹
48. In all of the other alternatives, the FEIS finds the result unchanged; treating the property as one large, for-sale unit continues to be the most profitable outcome for most scenarios, especially in higher-priced neighborhoods. Renting all units would be the least profitable valuation option for all combinations of neighborhood and parcel size. The FEIS states that the relative feasibility of rental of all dwelling units may increase in the Preferred Alternative and Alternative 2, due to the removal of the owner-occupancy requirement. According to the FEIS, in higher and medium-priced neighborhoods, the estimated residual land value of renting might increase 44 to 55 percent, and in lower-priced neighborhoods, the estimated increase might be 26 to 36 percent.⁶²

Pro Forma Results: Keep the Existing House or Teardown and Rebuild?

49. The FEIS indicates that in Alternative 1, the no-action alternative, new construction would be relatively more feasible on small- and medium- sized parcels than on large parcels. In addition, the FEIS finds that new construction is more feasible in higher- and medium-price neighborhoods than in lower-priced neighborhoods. Again, according to the FEIS,

⁶⁰ *Id.* at 4-22 through 4-23.

⁶¹ *Id.* at 4-23.

⁶² *Id.* at 4-24.

all the alternatives would see some increase in the relative feasibility of keeping the existing house. The FEIS states that this change is greatest for larger parcels. Lower-priced neighborhoods would see only a minimal change in the feasibility of teardowns between Alternative 1 and the Preferred Alternative.⁶³

Forecast Model

50. The FEIS forecasts estimates of ADU production and single-family construction for 2018-2027 using percentage assumptions based on comments received in the DEIS, review of the pro forma results, feedback from architects and homeowners about the biggest obstacles to ADU production, and professional judgment.⁶⁴ The adjustment factors are highest for the Preferred Alternative and Alternative 2, due to the larger suite of un-modeled policy changes contained in those alternatives, such as elimination of the parking requirement, additional allowed scale and footprint for DADUs, lack of information about potential demand for two DADUs, and effect of potential future City programs for DADU cost reduction.⁶⁵
51. The results indicate that all action alternatives would increase the production of ADUs citywide. According to the FEIS, 1,970 ADUs would be created under Alternative 1 (No-action) between 2018 and 2027; 4,280 ADUs under Alternative 2; 3,400 under Alternative 3; and about 4,430 ADUs under the Preferred Alternative.⁶⁶
52. The FEIS also states that Alternatives 2, 3, and the Preferred Alternative are likely to reduce teardowns, because the data shows that historically, households in Seattle have traded off between adding an ADU and demolishing and building. According to the FEIS, allowing DADUs on smaller lots would increase ADU production on those lots and at the same time decrease teardowns. In addition, the FEIS indicates that the Preferred Alternative would have the largest reduction in teardowns, with an estimated 22 percent decrease compared to Alternative 1, due to the FAR limits placed on new construction.⁶⁷
53. The FEIS also provides results broken down by neighborhood profile. Under Alternative 1 (no-action), baseline rates of ADU production and teardowns would be highest in higher-priced neighborhoods. According to the FEIS, 2 percent of the lots would build an ADU and 2.5 percent of the lots would experience a teardown, while in lower-priced neighborhoods, 1.6 percent of the lots would add an ADU and 1.5 percent would experience a teardown. Medium-priced neighborhoods would fall in between those two extremes.⁶⁸
54. The FEIS indicates that in all action alternatives, ADU production would be highest in higher-priced neighborhoods, followed by medium-priced neighborhoods. Lower-priced

⁶³ *Id.* at 4-25.

⁶⁴ Justifications for the adjustment factors are set out in the FEIS in Appendix A at A-68 through A-69.

⁶⁵ *Id.* at 4-28.

⁶⁶ *Id.* at 4-28 through 4-29.

⁶⁷ *Id.* at 4-28 through 4-29.

⁶⁸ *Id.* at 4-29 through 4-30.

neighborhoods would see the smallest potential changes in ADU production. The FEIS indicates that the number of ADUs in higher-priced neighborhoods would increase 164 percent with the Preferred Alternative over Alternative 1 (No-action). Likewise, 38 percent fewer single-family houses would be demolished in higher-priced neighborhoods under the Preferred Alternative due to the FAR limits on new construction.⁶⁹

iv. Impacts

Affordability

55. The FEIS summarizes issues regarding affordability by indicating that increases in housing supply generally have a positive effect on affordability, because it drives up vacancy rates and moderates increases in prices. In general, the FEIS predicts a positive effect on affordability by increasing the rental options in single-family zones.⁷⁰
56. The FEIS also concludes that the size of units can affect housing affordability, as larger units tend to be more expensive. Because ADUs are smaller in square footage, the FEIS posits that they are less expensive to rent, indicating that the median rent for ADUs was \$1400 in the fall of 2017 (citing a canvas of Craigslist ads). The FEIS indicates that increases in ADU production might also benefit homeowners by providing an additional income source.⁷¹ The FEIS acknowledges that the increase in ADU production will disproportionately benefit homeowners who have access to credit and financial resources necessary to construct an ADU.

Displacement

57. The FEIS states that in general, more teardowns indicate a higher likelihood of physical displacement. Therefore, a reduction in teardowns would have a positive effect on physical displacement. In terms of economic displacement, the FEIS predicts that greater ADU production has a positive effect on economic displacement, since it would increase rental housing options. In addition, the FEIS states that homeowners would benefit from a new stream of income if renting out an ADU, and therefore encourage economic stability, although again acknowledging that the overall cost of construction limits ADU development to higher-income homeowners.⁷²

Comparison Among the Alternatives

58. In Alternative 1, the FEIS predicts that current trends in ADU production would continue, and an estimated 1,970 additional ADUs would be created between 2018 and 2027. In that same time period, the FEIS predicts the Preferred Alternative would create approximately 4,430 ADUs, an up to 125 percent increase in the number of ADUs. With respect to

⁶⁹ *Id.* at 4-30.

⁷⁰ *Id.* at 4-31.

⁷¹ *Id.*

⁷² *Id.* at 4-32.

teardowns, the FEIS estimates there would be 2,030 teardowns under Alternative 1, while there would be only be 1,580 teardowns under the Preferred Alternative, a reduction of 22 percent of teardowns.⁷³

59. According to the FEIS, the most positive effects on affordability and displacement are found in the Preferred Alternative. The Preferred Alternative would have the “greatest positive impacts on affordability” resulting from “increased rental housing supply.”⁷⁴ The FEIS also states that the creation of additional housing options is likely to moderate increases in housing prices. In addition, the option of operating ADUs as rentals could provide an income stream making housing more affordable for owners. The FEIS concludes that “[o]verall, we do not expect to see adverse impacts on affordability under the Preferred Alternative.”⁷⁵

60. The FEIS also discusses the proposal’s potential impacts on displacement. The FEIS concludes that “[w]e expect the Preferred Alternative would have the greatest potential to alleviate ongoing economic displacement compared to other alternatives analyzed because it yields the largest number of ADUs and the greatest reduction in teardowns.”⁷⁶

v. Mitigation Measures

61. The FEIS does not propose any mitigation measures for socioeconomic impacts, as it determines that the proposed Land Use Code changes would have marginal benefits on housing affordability and would not increase displacement impacts.⁷⁷

vi. Significant Unavoidable Adverse Impacts

62. The FEIS states that the outcome of the analysis shows that the proposed Land Use Code changes will have marginal benefits on housing affordability and would not increase displacement impacts. The FEIS concludes that no significant adverse socioeconomic impacts are anticipated from the proposed Land Use Changes.⁷⁸

vii. Arguments of Appellant and Intervenor

63. Appellant presented the testimony of Mr. William Reid. Mr. Reid is an economist who specializes in economic effects of land use. He also testified at the hearing on the appeal of the DNS in 2016. He often consults with local jurisdictions concerning efforts to create higher density within cities.⁷⁹

⁷³ *Id.* at 4-33.

⁷⁴ *Id.* at 4-41.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 4-42.

⁷⁹ Testimony of William Reid (March 25, 2019) at 32-36.

64. Mr. Reid reviewed the FEIS, particularly the chapters concerning socioeconomics and housing, and parking. He also reviewed Appendix A-1, which provides a more in-depth discussion of housing and socioeconomics. He also reviewed the Mandatory Housing Affordability (“MHA”) FEIS, Appendix M.
65. Mr. Reid testified that although the FEIS does consider the issue of displacement risk and displacement of households in the context of the proposal, he sees three major flaws with the document: 1) the FEIS lacks analysis of the geographic context of displacement using actual data to accurately determine impacts; 2) the economic models used in the FEIS provide an incomplete and inaccurate picture of the economic context, and therefore will not accurately predict the number of ADU units that will be built; and 3) the parcel prototypes used in the models, specifying certain structure sizes on certain sized parcels, are inaccurate for neighborhoods in which there is greater displacement risk, and therefore the FEIS inaccurately minimizes teardown risk in those neighborhoods.⁸⁰
66. Mr. Reid’s first argument is that although displacement is mentioned as a potential risk, the FEIS fails to put the proposal into context with the geographic areas in which actual displacement has already occurred, as documented in census tract data. He pointed to Appendix M to the MHA FEIS as an example in which this work has already been completed by the City.⁸¹ Without a baseline of what actual displacement already exists within the City, Mr. Reid stated that it is hard to measure the added effect of displacement caused by the proposal. The result, according to Mr. Reid, is that absent documentation of historical census tract data, the existing context and circumstances of displacement is not used to build a framework or methodology to estimate impacts of this legislation. While the City did provide a map identified as the Seattle 2035 Displacement Risk Index,⁸² Mr. Reid opined that none of the actual data was factored in. He argued that the FEIS should contain a site-specific analysis, similar to the parking analysis in the FEIS, with respect to displacement examining specific blocks in neighborhoods that have already experienced displacement.
67. One of the City’s witnesses, Nicolas Welch, a strategic advisor in OPCD, disagreed with Mr. Reid’s analysis, indicating that the map and the classification of neighborhoods (higher, moderate, lower) is based on the Growth and Equity Analysis completed in May 2016. That document seeks to forecast areas where displacement may be a risk. It uses spatial data and the risk is mapped. According to Mr. Welch, the Growth and Equity Analysis informs the ADU FEIS by showing displacement within the study area.⁸³ Mr. Welch further stated that the Growth and Equity Analysis is an appropriate basis for the FEIS’s displacement analysis because it has been substantially vetted, used in various other City efforts, formally adopted by the City Council as a means for assessing displacement risk, and provides a forward-looking analysis of displacement risk, suitable for an FEIS

⁸⁰ *Id.* at 43-46.

⁸¹ *See* Exh. 23.

⁸² Exhibit 4.1-18 in the FEIS at page 4-38.

⁸³ Testimony of Nicolas Welch (March 27, 2019) at 209-212.

with a ten-year study horizon. In contrast, the MHA FEIS Appendix M looks back to the past to determine where displacement has already occurred.⁸⁴

68. Mr. Welch explained that the MHA FEIS Appendix M shows the change in the number of households in certain income and racial groups over a period of time and compares that with the number of housing units built. He also stated that Appendix M determined that there was no correlation between the number of units built in an area and the displacement of households.⁸⁵ Mr. Welch further testified that the census tracts typically contain a combination of single-family, multi-family, and mixed use zoning areas, so that there is no good relationship between the census tracts and single-family zones. Therefore, it would be impossible to evaluate whether a loss in low-income households occurred in the single-family zone or the multi-family or mixed use zone, because all the data is at the census tract level and cannot be disaggregated.⁸⁶
69. Mr. Reid's second point is that the FEIS uses economic models that provide an incomplete and inaccurate picture of the economic context, such that they do not accurately predict the number ADU units that will be built. Mr. Reid criticizes both the highest and best use analysis and the forecast model.⁸⁷
70. Mr. Reid criticized the use of the residual land value ("RLV") analysis as part of the highest and best use analysis. According to Mr. Reid, the residual land value analysis is used to determine whether a property is a viable option for redevelopment for developers, and only works for those looking to buy a parcel at market value and redevelop. This is the way most developers would determine whether a property "pencils out." Mr. Reid stated that the analysis fails to consider the decision tree that would be used by homeowners who have owned the property for a number of years and are deciding whether to build an ADU or multiple ADUs. In Mr. Reid's opinion, these are the properties that are at a higher risk for displacement. For this category of potential ADU production, the calculus is different and dependent upon a different type of analysis, the "return on cost" model. In that model, the focus is upon the cost of building the structure, financing it, and producing an income stream from it. Under that model, according to Mr. Reid, the typical return on real estate has to be around 10 percent to make the investment worthwhile.⁸⁸
71. The City also presented the testimony of Morgan Shook, Senior Economic Policy Analyst. Mr. Shook indicated that the RLV analysis uses the same math and variables as the return on cost model. Mr. Shook stated that even with return on cost, there has to be an input for the land basis. The choice of RLV over cost of return is perfectly valid in Mr. Shook's opinion because in using the RLV, the FEIS is not trying to predict or model any specific landowner's cost or financing conditions; instead, it is trying to disclose to decisionmakers the effects of the land use changes, holding as many variables constant as possible.⁸⁹

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 210-11.

⁸⁷ Testimony of William Reid (March 25, 2019) at 67-79.

⁸⁸ Testimony of William Reid (March 25, 2019) at 95-96.

⁸⁹ Testimony of Morgan Shook (March 28, 2019) at 137-138.

72. Mr. Reid also criticized the forecast model, particularly the assumptions made to adjust the model to be responsive to the possible policy changes. His recollection was that those adjustments were arbitrary in nature.⁹⁰ Mr. Reid also expressed the concern that any predictive forecast model based on historical data would be problematic for forecasting in a different set of economic circumstances; in other words, possible new policy changes in the ADU legislation.
73. Mr. Shook disagreed with Mr. Reid's characterization, and pointed out the detailed rationale that was used for making the adjustments at page A-68 and Exhibit A-46 of the FEIS.⁹¹
74. Finally, Mr. Reid stated that parcel typology used in the highest and best use analysis is flawed and does not accurately represent parcels in areas with high displacement risk. As stated earlier, the parcel typology used to predict how many ADUs will be built rests on six representative parcel sizes with a certain size of improvements (square footage of principal structure). Mr. Reid stated his research indicated that communities at risk for displacement tend to have non-common forms: notably, smaller square footage of improvements on a common parcel size. He stated that the highest and best use analysis doesn't accurately look at those properties at most risk of displacement. Because those structure sizes are smaller than those analyzed in the parcel typology, it fails to properly consider the economics of teardown in those neighborhoods. Mr. Reid opined that the FEIS needs to drill into structure size and a better understanding of the built environment to accurately forecast the likelihood of teardown. His theory is that the smaller the structure, the more likely it is to be torn down or expanded to maximize economic return. He cited examination of a block area in Columbia City at 37th and Dakota—a total of 23 structures—for empirical evidence that structures in neighborhoods that are at higher risk of displacement have smaller structures than identified by the parcel typology.⁹²
75. The City's witness, Aly Pennucci, Supervising Analyst with the City Council, testified that she reviewed the parcel map of the area in Columbia City about which Mr. Reid spoke, and determined that he had inaccurately identified some of the area as single-family, when it is actually zoned multi-family.⁹³ According to Ms. Pennucci, the area Mr. Reid testified about is partially multi-family zoning and not part of the study area; therefore his example is not representative of the conditions studied in the FEIS.
76. Mr. Reid and other witnesses discussed a trend that they allege changes the economic equation with respect to ADU production but was not discussed in the FEIS. Mr. Martin Kaplan is a licensed architect who has practiced in Seattle for the past 47 years, primarily in the residential field, owns a development company focusing on single-family and multi-family projects, and has been a member of the Queen Anne Community Council for the

⁹⁰ Testimony of William Reid (March 25, 2019) at 78.

⁹¹ Testimony of Morgan Shook (March 28, 2019) at 157-159.

⁹² Testimony of William Reid (March 25, 2019) at 55-59.

⁹³ Testimony of Aly Pennucci (March 29, 2019) at 143-145.

last 17 years.⁹⁴ He provided evidence of two single-family lots in Seattle that recently had been put through the condominium process (“condominiumization”) after building an ADU on the lot; the owners put up for sale the main house and the ADU as separate condominiums on the same single-family lot.⁹⁵

77. Mr. Reid concluded his testimony by voicing the opinion that the number of ADUs that will be built is significantly underestimated by the FEIS, particularly when they can be condominiumized and sold. According to Mr. Reid and Mr. Kaplan, building, condominiumizing and selling properties is much simpler and more lucrative than owning and renting an ADU. Mr. Reid also pointed out that if a homeowner builds an ADU and/or DADU, the property will be worth significantly more, which will increase the price of the property such that it is even farther out of reach for the typical first time homeowner, and therefore decrease the supply of affordable housing. Finally, Mr. Reid stated that the removal of the owner-occupant requirement increases the likelihood of ADUs, and in areas where the homes are smaller and the lots are larger, there is a likelihood that a significant number of new ADUs will be built.⁹⁶
78. The City’s witnesses pointed out that all of those impacts could occur today, with the exception of a second ADU on the property. The City takes the position that the proposal will have positive effects for affordability by increasing the rental supply.

B. Aesthetic Impacts

79. Examiner Tanner ordered that on remand, the analysis of the height, bulk, and scale impacts be completed in the context of the actual development environment created by the legislation and include renderings that accurately represent the maximum height, bulk, and scale that could be constructed on at least one full block and include lots as small as 3200 square feet. The FEIS contains analysis of aesthetic impacts in Chapter 4.3 of the document, and in Appendix C.
- i. Background on Aesthetic Form Existing in Single-Family Neighborhoods*
80. The FEIS states that the form of existing development varies widely across Seattle, but it attempts to document common built form conditions to provide a baseline for analyzing aesthetic impacts.⁹⁷ The study area consists of neighborhoods with homes of varying size and age. According to the FEIS, older homes are generally one or two-story and are smaller than the maximum three-dimensional space a single-family home can occupy (“zoning envelope”). Homes built more recently tend to occupy the full zoning envelope and are being produced incrementally, mixing in with older homes in neighborhoods. The FEIS acknowledges that newer homes filling the zoning envelope often have a modern design and appear square or boxy. Houses are typically set back 10-15 feet from the street with

⁹⁴ Testimony of Martin Kaplan (March 26, 2019) at 6-9.

⁹⁵ See Exh. 29(a)(1) through (a)(10) & 30 (a)(1) through (10).

⁹⁶ Testimony of William Reid (March 25, 2019) at 79-82.

⁹⁷ FEIS at 4-86.

landscaped front yards.⁹⁸

81. The City does not require design review for single-family homes.⁹⁹ The FEIS states that the City influences the overall aesthetic quality of single-family neighborhoods by regulating bulk of buildings, and limits on heights, density, floor area ratio (“FAR”), and lot coverage.¹⁰⁰ Preferences on form are inherently subjective, according to the FEIS, and dependent on surrounding context. The FEIS acknowledges that new development can create aesthetic impacts when the bulk and scale differ from the surrounding neighborhood.¹⁰¹
82. The FEIS states that ADUs have been allowed in the City since 1994 and DADUs have been allowed since 2010, although only one ADU per single-family lot is currently allowed. Currently, according to the FEIS, “ADUs exist throughout the study area and are compatible with the scale and urban form of Seattle’s single-family neighborhoods.”¹⁰²
83. The FEIS states that the existing tree canopy in single-family neighborhoods adds numerous aesthetic and health benefits to residents and contributes to the overall livability of communities.¹⁰³

ii. FEIS Methodology for Assessing Aesthetic Impacts

84. The City produced numerous graphics and drawings in the FEIS to depict the height, bulk, and scale of increased ADU production in each alternative.¹⁰⁴ No scenario was an actual neighborhood in the City. OPCD strategic advisor Mr. Welch stated that it is possible to put a number of different elements representative of Seattle’s disparate neighborhoods in a two-block area model by creating a hypothetical.¹⁰⁵ According to the FEIS, the model is based closely on actual houses in Seattle, with a range of sizes and parking access conditions (including detached and attached garages with alley access; detached and attached garages with front driveway access; driveway parking; and attached garages with front-driveway access; or lots with off-street parking) to represent a realistic variety of conditions that are more or less conducive to adding ADUs.

iii. Results

85. For each alternative, the FEIS presents graphic models of two future scenarios based on ADU production estimates: a ten-year scenario and a full build-out scenario. The depictions also include parked vehicles to illustrate how the availability of parking could vary across the alternatives, although they do not represent the results of the parking

⁹⁸ *Id.*

⁹⁹ *Id.* at 4-88 through 4-89.

¹⁰⁰ *Id.* at 4-89.

¹⁰¹ *Id.*

¹⁰² *Id.* at 4-89.

¹⁰³ *Id.* at 4-90.

¹⁰⁴ *Id.* at 4-95 through 4-141.

¹⁰⁵ Testimony of Nicolas Welch (March 27, 2019) at 75-79; *see id.* at App. C at C-2.

analysis.¹⁰⁶

86. The FEIS also discusses changes to development standards that would result from the action alternatives, including the lowering of minimum lot size for DADUs, expanding the size of DADUS, and increasing maximum height and rear lot coverage, all of which could result in aesthetic impacts from increased bulk, scale, and height in single-family neighborhoods. In addition, the FEIS states that these changes could decrease the vegetation and tree canopy on lots where owners choose to construct DADUs.¹⁰⁷

iv. Aesthetic Impacts

87. The impacts section of the FEIS reviews that between 2018 and 2027, Alternative 1 (no-action) would create 1,970 newly constructed ADUs with 2,030 teardowns, Alternative 2 would create 4,280 newly constructed ADUs with 1,800 teardowns, Alternative 3 would create 3,400 newly constructed ADUs with 1,430 teardowns, and the Preferred Alternative would create 4,430 newly constructed ADUs with 1,580 teardowns throughout the study area.¹⁰⁸ It concludes that this additional ADU production would result in a minor increase in the scale and intensity of development.

v. Mitigation Measures

88. Because the FEIS does not anticipate any significant adverse environmental impacts, it does not propose any mitigation measures.¹⁰⁹

vi. Significant Unavoidable Adverse Environmental Impacts

89. The FEIS states:

Under all alternatives, increased development on lots in single-family zones would occur in the study area, leading to a general increase in building heights and development intensity over time. This transition is an unavoidable and expected characteristic of urban populations and employment growth. Alternatives 2 and 3 and the Preferred Alternative would further this trend by creating additional development capacity and incentives that could accelerate the development of taller, more intense ADUs in the study area. Alternatives 2 and 3 and the Preferred Alternative would also result in a minor decrease in the rate of main houses being torn down and rebuilt. And, Alternative 3 and the Preferred Alternative would specifically reduce the size of the main house that could be constructed through the implementation of FAR limits. However, no significant unavoidable adverse impacts on aesthetics are anticipated as a result of the

¹⁰⁶ FEIS at 4-92.

¹⁰⁷ Id. at 4-145 through 4-161.

¹⁰⁸ Id. at 4-142, 4-153, & 4-157.

¹⁰⁹ Id. at 4-161.

proposed Land Use Code changes.¹¹⁰

vii. Arguments of Appellant and Intervenor

90. The Appellant presented the testimony of Martin Kaplan, an architect, developer, and member of the Queen Anne Community Council. He voiced the opinion that the FEIS is inadequate in its review, exploration, and methodology for assessing aesthetic impacts. His criticisms of the FEIS can be summarized as follows: 1) the FEIS did not consider any individual neighborhoods; it is inadequate to consider a hypothetical neighborhood when there are 30 real neighborhoods across the City; 2) the FEIS grossly underestimates the number of ADUs that will be produced and lots that will be fundamentally changed; 3) the FEIS is silent on the impacts of allowing up to 12 unrelated people to live on a single-family lot; and 4) the FEIS is silent on the impact of a .5 FAR.
91. Mr. Kaplan's first argument is best summarized by a quote in a comment letter from the Appellant dated June 1, 2018:¹¹¹

As we considered the . . . requirements for an adequate EIS, we found the City's own statement within the DEIS on page 4-66 most noteworthy in substantiating our position for inadequacy.

“The form of the existing development varies widely across single-family zones in Seattle; therefore, a comprehensive summary is not possible.” . . .

Throughout the DEIS, the City has ignored the outcry from every neighborhood, the Decision of the Hearing Examiner in our appeal, a majority of comments from the scoping exercise, and the requirements established by law that mandate “comprehensive” analysis of all environmental impacts. In the above snip from their own DEIS, the city admits that such a lawful study is not possible, however we strongly disagree. It is only not possible if City Hall in fact follows a pre-determined ideology that considers the city and half its land area to be among many things—homogenous, flat, treeless, carless, complete with sidewalks, rich with abundant reliable mass transit, platted similarly, and undifferentiated culturally, economically, socially and without neighborhoods of different age, uniqueness, size and character. The fact that the city continues to ignore the law by refusing to consider the unique qualities, issues and opportunities, and significant diversity of over 30 neighborhoods alone renders the DEIS inadequate.

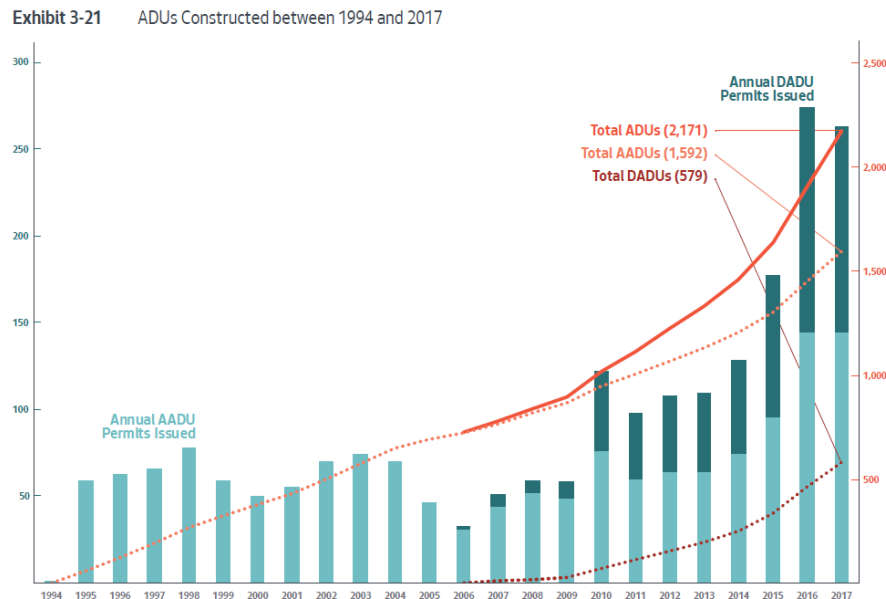
92. Mr. Kaplan submitted Exhibit 28 in the record. In pages 15-19, the illustrations contain aerial photos of a several-block area in the Queen Anne neighborhood, and compare those

¹¹⁰ *Id.*

¹¹¹ Exh. 25 at 3.

illustrations to the hypothetical block developed by the FEIS consultants. The point of the illustrations is to show that real neighborhoods have different characteristics than those shown in the consultant's illustration, including lot size, tree cover, accessory structures, driveway locations, and other variables.¹¹² Both Mr. Kaplan and Mr. Reid testified that the FEIS should have chosen blocks in a number of different neighborhoods, similar to the parking analysis, rather than developing a composite drawing that didn't show any real block area in Seattle.

93. Exhibit 28 also contains graphics depicting various development scenarios, which he opined could occur as a result of adoption of the Preferred Alternative. The parties argued about the accuracy of these illustrations throughout the hearing and several were later admitted by the Appellant to be inaccurate. The effort made in this exhibit was in part to show how the action alternatives could potentially impact existing neighborhood areas.¹¹³
94. Mr. Kaplan referred to a chart in Exhibit 28 to make the point that there has been a significant upsurge in the number of ADUs built in the City in 2016 and 2017, after the time that the City Council adopted Resolution 31547 (in 2014).¹¹⁴ He contends that all of the incentives provided in the action alternatives are unnecessary, as the number of ADUs has grown significantly in the last few years.¹¹⁵ His chart is the same as that provided in the FEIS at Exhibit 3-21 at page 3-33:



95. He opined that by allowing three units on every lot (as in Alternative 2 and the Preferred Alternative), the City would be handing developers an incredible opportunity to build

¹¹² Exh. 28 at 15-19.

¹¹³ Exh. 28 at 14-28.

¹¹⁴ See Exh. 31.

¹¹⁵ Testimony of Martin Kaplan (March 26, 2019) at 68.

triplexes. He predicted that the legislation would produce nothing but boxes, so that builders can maximize their return on investment. He also noted that the Preferred Alternative would exempt ADU and DADU square footage from the FAR limits, such that there would be 4500 square feet of floor area between the three units, with more possible if basement area is used. His prediction was that the Preferred Alternative would produce up to 6500 square feet of floor area on a 5000 square foot lot. He stated that the FEIS does not evaluate the impacts of converting a lot or a group of lots into very large buildings in a single-family neighborhood.¹¹⁶ He also opined that the numbers assumed by the FEIS for additional ADU production are far below what will actually occur.

96. Mr. Kaplan explained his theory that single-family neighborhoods would convert to blocks full of large boxy buildings rather than single-family homes:

I have done infill development design on both single-family under the current code and also multi-family on—on small lots. And, essentially, by allowing three units on every lot, as a . . . developer, investor, and speculator, there is no way that someone wouldn't take a look at a piece of property and go through a pro forma on deciding how to best develop that property. And I think- based on my experience- that the EIS does not consider the incredible opportunity to small developers to convert single-family residences to three-unit triplexes. The way the code is written, there is no parking requirement. There's . . . 35 percent lot coverage, but other than that, there's an ample height restriction that will produce nothing but boxes because developers will build to the limits they can possibly build. And there won't be any cute . . . boxes because of the height limit. And I think it's just a simple return on investment.¹¹⁷

97. Mr. Kaplan testified extensively about condominiumization of single-family lots and the creation of two ADUs on each lot. He introduced two sets of exhibits which indicated that two single-family properties in the City, each with a DADU, had been condominiumized and put on the market for sale as separate units. Mr. Kaplan indicated that he had turned both examples into code compliance, assuming that this practice violated the code. SDCI declined prosecution, finding no violation of the code.¹¹⁸ He explained that the market is already driving this result, and if the City were to allow three units on a single-family lot, that would change the economics enough to drive developers to tear down old houses and build a large box housing three units.¹¹⁹ His opinion is that the sale model is very different from the rental model, and that there would be much more interest by developers in producing for-sale condominiums than producing rental units.¹²⁰

98. Mr. Kaplan also voiced concern over the allowance of an increased number of unrelated persons living on a single-family lot. Under the existing code, eight unrelated people are

¹¹⁶ Testimony of Martin Kaplan (March 26, 2019) at 35.

¹¹⁷ *Id.* at 35.

¹¹⁸ Exh. 29(A)(8) through (A)(11) 7 Exh. 30(A)(9) through (A)(10).

¹¹⁹ Testimony of Martin Kaplan (March 26, 2019) at 105-114.

¹²⁰ *Id.* at 108.

allowed to live on a single-family lot, while an unlimited number of related persons can live on one lot. One of the proposed changes to the ADU code would increase the number of unrelated persons to 12 if two ADUs are built (Preferred Alternative). Mr. Kaplan's concern is that the increase in the numbers of unrelated persons allowed would lead to greater density in the single-family zone than in the multi-family zone.¹²¹ He predicted that the combination of the greater number of people and the ability to build what Mr. Kaplan termed as a triplex, would eventually erase the land form for single-family homes.

99. With respect to FAR, Mr. Kaplan made the observation that the limitation of .5 FAR or 2500 square feet, whichever is greater, is very onerous as it applies to all new construction in single-family zones. For those who wish to construct a new family home without an ADU, the limitation results in a smaller home. Because ADUs are exempted from this limitation, the provision has what Mr. Kaplan termed as an unintended consequence of making the home much larger if two ADUs are added, to the point where the actual FAR for a lot with two ADUs could be up to 1.05.¹²²
100. In response, the City called Nicolas Welch, a strategic advisor for the OPCD, who disputed Mr. Kaplan's calculations and stated that a 2,500 square foot home with two 1,000 square foot ADUs on a 5,000 square foot lot would have an effective FAR of .83, not 1.05.¹²³

C. Tree Canopy Aesthetic Impacts

101. Tree canopy is covered in the FEIS in the Land Use Chapter, Chapter 4.3. The FEIS indicates that most of Seattle's urban trees are found in residential areas (representing 67 percent of land area with 72 percent of Seattle's tree canopy) and in rights-of-way throughout the City (representing 27 percent of the land area and 22 percent of the tree canopy). About 72 percent of Seattle's trees are deciduous and 28 percent are coniferous. Approximately 52 percent of the conifers are in single-family residential areas.¹²⁴
102. Exhibit 4.2-9 shows currently that on study area lots without a DADU, the average percentage of tree cover is 30.8 percent. On lots with a DADU, the average percentage of tree cover drops to 28.6 percent. On lots on which a new single-family residence has been constructed (since 2010), the average percentage of tree cover is 22.7 percent, about 8 percent lower than the overall average.
103. The FEIS discusses impacts on tree canopy of the proposal. The FEIS states that the single-family neighborhoods in Seattle currently provide about 9,574 acres of tree canopy. If Alternative 2 or the Preferred Alternative were adopted, rear yard coverage would be increased to 60 percent. According to the FEIS, if 1,085 DADUs were built under Alternative 2 at the maximum size of 1,000 square feet, the total footprint of these structures would be just under 25 acres, or less than .3 percent of the total tree canopy in

¹²¹ *Id.* at 39-40.

¹²² *Id.* at 70-71; *see* Exh. 28 at 5-6.

¹²³ Testimony of Nicolas Welch (March 26, 2019) at 187-188.

¹²⁴ *FEIS* at 4-52.

single-family residential areas (assuming all 25 acres are covered in tree canopy). This upper-end estimate, according to the FEIS, assumes that existing tree regulations would not protect the trees, and that no homeowner would make the choice to preserve the existing trees. The FEIS states that in addition, other policies such as the FAR limitation and removal of the parking requirements might reduce the minor impact on trees.¹²⁵ The FEIS concludes that even with full build-out, the impacts of the proposal are likely to be minor.¹²⁶

104. There was no expert testimony on tree canopy and potential impacts of the proposal, per se. Mr. Kaplan testified regarding trees on single-family lots from his viewpoint as an architect and developer with expertise in spacing of buildings and landscaping, including trees, on a lot.¹²⁷ He presented evidence showing that 63 percent of the tree canopy in Seattle is in single-family zones.¹²⁸ He testified that in his opinion, the legislation would result in the removal of trees, which would be an adverse aesthetic impact.¹²⁹
105. Mr. Kaplan further testified that to ensure a certain tree will fit in a space an architect will measure the drip line of the tree and place it so the drip line is not interfered with by any structure.¹³⁰ He stated that in order to place foundation and drainage around a new building, there must be an allowance of at least three additional feet on each side. Finally, he testified that new stormwater regulations enacted in 2016 require on-site stormwater retention, which could take up 200 to 300 square feet on a single-family site.

D. Parking Impacts

i. FEIS Methodology for Studying Parking Impacts

106. The FEIS analyzes parking in the study area, the single-family zones of the City. To study the affected environment related to parking, the FEIS analyzes four study locations that are intended to provide a representative sample of neighborhoods where ADUs could be constructed. According to the FEIS, the study areas represent a range of conditions found in single-family zones, including areas that vary by lot size; the presence of alleys, driveways, and sidewalks; and proximity to transit. The FEIS identified blocks with unrestricted parking, restricted parking, and no parking allowed. The study areas are denominated by their locations in the City: northwest, northeast, southeast, and southwest.¹³¹
107. The FEIS analysis focuses on unrestricted parking spaces and their utilization. Because peak parking demand usually occurs overnight on a weeknight, the FEIS uses weeknight overnight parking data to estimate parking utilization. For single-family areas near retail

¹²⁵ *Id.* at 4-67 & 4-76.

¹²⁶ *Id.* at 4-67.

¹²⁷ Testimony of Martin Kaplan (March 26, 2019) at 75-76.

¹²⁸ Exh. 28, p. 38.

¹²⁹ Testimony of Martin Kaplan (March 26, 2019) at 84.

¹³⁰ *Id.* at 120.

¹³¹ FEIS at 4-166.

centers, the FEIS utilizes weekend afternoon data, as that is usually when the peak on-street parking demand occurs.¹³²

108. For the study, the FEIS uses data collected by the Seattle Department of Transportation in 2016 (for the southeast and southwest study areas) and data collected specifically for the proposal (for the northeast and northwest study areas).¹³³
109. The FEIS estimates that there is an average of 22 spaces per block across all the study areas, ranging from 18 per block in the northwest area to 27 per block in the southwest study area.¹³⁴
110. The FEIS measured both parking utilization and parking availability in the four study areas. Parking utilization is the number of parked vehicles observed, divided by the number of unrestricted on-street parking spaces. The study showed weekday parking utilization rates averaging 56 percent in all four study areas, with the highest being 78 percent in the southeast area and the lowest being southwest at 51 percent. In studying the parking utilization rates per block, the FEIS shows that overall 57 percent of blocks across the study locations had utilization rates above 50 percent. The southeast study area had a higher share of blocks with utilization rates of at least 75 percent.¹³⁵
111. The FEIS defines parking availability as the total number of parking spaces available per block. Parking availability is calculated by subtracting the estimated future parking demand from total on-street parking supply. This calculation represents the existing capacity for additional on-street parking per block.¹³⁶ The study showed that 21 percent of the blocks in the southeast study location were over capacity; i.e., the parking demand exceeds the parking supply. Across all study locations, 9.8 percent of parking spaces are available per block on average (including blocks at or over capacity).¹³⁷
112. To evaluate potential parking impacts associated with the proposal, the FEIS compares the existing availability of on-street parking with the expected increase in demand for on-street parking under each alternative. This analysis required an estimation of the vehicle ownership rates for residents in ADUs, reviewed the number of potential new ADUs in the study location (calculated in the Chapter 4.2 of the FEIS), assumed all residents of an ADU with a car would park it on the street, and then evaluated the projected change in parking availability.¹³⁸
113. The study estimated 1.0 to 1.3 additional vehicles per new ADU, based on studies performed in three Oregon cities. Based on the 2018-2027 ADU production estimates generated using the pro forma analysis and forecast model in Appendix A, the study made

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* at 4-167.

¹³⁵ *Id.* at 4-168.

¹³⁶ *Id.*

¹³⁷ *Id.* at 4-167 through 4-168.

¹³⁸ *Id.* at 4-180.

a conservative estimate that in the Preferred Alternative and Alternative 2, 5 percent of the eligible parcels would have two ADUs.¹³⁹

ii. Results

114. The FEIS includes the results of the parking analysis by study location at Exhibit 4.4-14 at page 4-183 of the FEIS. The results show that parking utilization does not rise above 85 percent in any location.¹⁴⁰

iii. Parking Impacts

115. For each of the alternatives, including Alternative 1, the FEIS concludes:

Although none of the four study locations exceeds the 85 percent threshold, there are likely some specific blocks within the study area where on-street parking utilization currently exceeds parking supply and would be more sensitive to changes in local population. The degree of the deficiency and impacts experienced in any given neighborhood depends on many factors, including an individual's choice to park on or off the street when off-street parking spaces exist (i.e., in a driveway or a garage that are required or provided voluntarily). The City will continue to respond to changes to parking supply in specific areas that currently have or are projected to have high parking utilization.

116. The study indicates that across all of the study areas, parking utilization would increase under Alternative 2 and the Preferred Alternative in 6 to 21 percent of study area locations, depending on the location.¹⁴¹

iv. Mitigation Measures

117. The FEIS indicates that the City will continue to monitor for any changes in parking supply in specific areas that currently, or are projected to, exceed available supply. It indicates that a suite of measures, including "restricted parking zones" ("RPZs") and other transportation options, are available as mitigation. Specifically, the FEIS states that:

if issues are identified, the City will rely upon use of regulations in its municipal code . . . and continued implementation of RPZs in areas that meet eligibility requirements. Further the City will continue to implement plans to improve the transit, pedestrian, and bicycle network.¹⁴²

¹³⁹ *Id.* at 4-181 through 4-182.

¹⁴⁰ *Id.* at 4-183.

¹⁴¹ *Id.* at 4-186 & 4-188.

¹⁴² *Id.* at 4-189.

v. Significant Adverse Impacts to Parking

118. The study concludes that increased parking demand resulting from ADU production in the four study areas would not exceed existing on-street parking availability.¹⁴³ Further, none of the four study areas resulted in parking utilization over 85 percent. Because of those factors, the FEIS concludes that the proposal will have no adverse impact upon parking.¹⁴⁴

vi. Arguments of the Appellant and Intervenor

119. The Appellant presented evidence from a transportation planner, Ross Tilghman, to dispute the findings in the FEIS. Mr. Tilghman found the following flaws with the FEIS: 1) the FEIS does not accurately portray the parking supply in the northeast and northwest study areas—it overstates the legal parking supply by more than 20 percent in some cases due to the fact that existing utilization was determined by a single observation; 2) the FEIS does not study the impact of the maximum occupancy scenario that the proposed legislation would allow (12 unrelated adults living on a single property across three units); 3) the FEIS neglects consideration of the cumulative effects of known pipeline projects; and 4) contrary to the study results, the northwest study area at least would exceed 85 percent utilization based on the projected number of ADUs to be produced.¹⁴⁵
120. Mr. Tilghman’s first point of discussion relates to the method by which the City measured parking inventory in the northeast and northwest study areas. Mr. Tilghman stated that he had done a parking study for a small mixed-use project at 7009 Greenwood, not far from the northwest study area, and that some of the blocks actually overlap. In addition, he measured by wheel a select number of other block faces in the northwest study area. He compared the parking space numbers and determined that the FEIS was reporting more legal parking on the same blocks than he had measured. He stated that although he asked for backup data to support those findings, the parking study authors were unable to provide any.¹⁴⁶ His numbers indicated 20 to 27 percent less legal parking in the northwest quadrant. Doing his own measures in the northeast quadrant following Tip 117, he found anywhere from 3 to 18 percent less parking. He also did more measurements in the northeast area. His observation is that there was a systemic overestimation of legal parking by the FEIS. His conclusion is that by overestimating parking supply, the FEIS finds there are more spaces available for prospective ADUs.¹⁴⁷ He indicated that his measurements show that the northwest study area is much closer to 85 percent under existing conditions when accurately measured.¹⁴⁸ According to Mr. Tilghman, the 85 percent occupancy threshold is generally considered by the profession as the practical limit of capacity. At 85 percent capacity, there may be a handful of spaces still available, but they are difficult to find.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 4-188.

¹⁴⁵ Testimony of Ross Tilghman (March 25, 2019) at 137-138.

¹⁴⁶ *Id.* at 140-41.

¹⁴⁷ *Id.* at 143.

¹⁴⁸ *Id.*

121. Tip 117, Parking Waivers for Accessory Dwelling Units,¹⁴⁹ was relied upon by Mr. Tilghman in his testimony. He stated that the 85 percent threshold is included in Tip 117, and that Tip 117 states that no waiver will be granted if parking is above the 85 percent threshold. Mr. Tilghman produced his field notes showing his parking calculations.¹⁵⁰ He indicated that he performed the measurements in the same manner as recommended by Tip 117, using a wheel tape to accurately measure the distances.¹⁵¹
122. The City presented the testimony of Amalia Leighton Cody, a consultant who worked on the team that authored Chapter 4.4 and Appendix C of the FEIS. In response to Mr. Tilghman's testimony, she testified that Tip 117 provides one way to calculate parking inventory, but not the only way. According to Ms. Leighton Cody, Tip 117 does not explicitly require a person to use a wheel. She stated that the company that actually did the counting used the observational method instead of wheeling every block. The observational method allows the consultant to observe (usually online) based on their experience, whether the parking distances required are met. She stated that because there are a variety of interruptions along a block face, such as driveways, fire hydrants, etc. that might affect parking supply, they wanted to identify representative block faces to account for that variety of interruptions across the City. She explained that for the scale of the study area for a nonproject EIS, the observational method was appropriate.¹⁵²
123. Ms. Leighton Cody also criticized the manner in which Mr. Tilghman collected data, in that he only conducted measurements on a small number of block faces and then extrapolated from there. He chose different factors for the northeast (73 percent) and northwest areas (80 percent), which Ms. Leighton Cody did not find to be logical. Ms. Leighton Cody stated she had the parking consultant spot check their findings, and she personally drove and walked the area to check the data. She reported that in one particular part of the northwest study area, Northwest Division Street, she checked the observed data and found it was actually less than the wheeled data. Therefore, the FEIS underreported inventory in that area.
124. Mr. Tilghman also described walking sheds as the distances people are willing to park from their home. He stated that most people want to park within the block that they live, and few people wish to cross "barrier" streets, such as arterials, to park their cars. Mr. Tilghman stated that the FEIS should have taken into account walking sheds when considering parking for additional ADUs. In his opinion, when considering projects that are in the pipeline in certain areas such as Greenwood, the 85 percent threshold is already met, and any additional on-street parking due to ADU production would constitute a significant adverse impact.¹⁵³
125. Ms. Leighton Cody stated that the FEIS identifies that parking may not be an issue unless the parking utilization exceeds 85 percent, and she did not believe that walking sheds were

¹⁴⁹ Exh. 22.

¹⁵⁰ See Exh. 4 & 5.

¹⁵¹ Testimony of Ross Tilghman (March 25, 2019) at 148.

¹⁵² Testimony of Amalia Leighton Cody (March 29, 2019) at 31-32.

¹⁵³ Testimony of Ross Tilghman (March 25, 2019) at 160-175.

an issue that needed to be addressed in the FEIS. She testified that the FEIS does acknowledge that some streets may exceed that number, although at this stage it is impossible to know where because it all depends on where ADUs will be built. She pointed out that the FEIS does identify potential mitigation measures to address this issue, including RPZs and other forms of transportation options.¹⁵⁴

126. Mr. Tilghman also noted that the FEIS estimated one car per ADU, based on the study of ADUs by the City of Portland. He noted that the occupancy in that study was a maximum of six unrelated people per single-family lot, while Alternative 2 and the Preferred Alternative would increase that number from eight unrelated people to twelve unrelated people (if two ADUs were built on the lot). He pointed out that the FEIS didn't make any adjustment for this increased number of people allowed per single-family lot.¹⁵⁵ He estimated that with occupancy of up to twelve unrelated people, a single-family lot would generate up to nine additional cars per lot.
127. The City presented the testimony of Aly Pennucci, Supervising Analyst for the City Council staff, who worked extensively on the FEIS. She stated that even though they were aware that the Portland Study (upon which the assumption of one vehicle per ADU is based) was based on an assumption of a lower maximum number of household members, they did not adjust the number of vehicles upward. She stated two reasons for that decision. First, she stated that the parking study made some very conservative assumptions that more than made up for the possible discrepancy. For example, in their assumption that five percent of the single-family lots would develop an ADU under the Preferred Alternative, they assumed all lots that were developing an ADU would be developing two ADUs and that all ADUs would have one car; in other words, they assumed two cars for every lot developing an ADU. The second reason stated by Ms. Pennucci was that the Portland Study indicated that just one percent of the ADU occupants in Portland have three or more adults living in the unit. Based on that statistic, she believes that it would be a very rare occurrence to have 12 unrelated people living on a single-family lot.¹⁵⁶
128. Mr. Tilghman testified on rebuttal that RPZs are not meant to limit the number of residents parking in the area, only nonresidents who may be frequenting nearby businesses or parks.¹⁵⁷

Applicable Law

129. SMC 25.05.400, Purpose of EIS, states in pertinent part:
- A. The primary purpose of an environmental impact statement is to ensure that SEPA's policies are an integral part of the ongoing programs and actions of state and local government.

¹⁵⁴ Testimony of Amalia Leighton Cody (March 29, 2019) at 39-41.

¹⁵⁵ Testimony of Ross Tilghman (March 25, 2019) at 178-180.

¹⁵⁶ Testimony of Aly Pennucci (March 29, 2019) at 158-161.

¹⁵⁷ Testimony of Ross Tilghman (March 29, 2019) at 204.

- B. An EIS shall provide impartial discussion of significant environmental impacts and shall inform decisionmakers and the public of reasonable alternatives, including mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality.
 - C. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by the necessary environmental analysis.
130. SMC 25.05.402, General Requirements, states in pertinent part:
- A. EIS's need analyze only the reasonable alternatives and probable adverse environmental impacts that are significant. Beneficial environmental impacts or other impacts may be discussed.
 - B. The level of detail shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or referenced.
 - C. Discussion of insignificant impacts is not required; if included, such discussion shall be brief and limited to summarizing impacts or noting why more study is not warranted.
 - D. Description of the existing environment and the nature of environmental impacts shall be limited to the affected environment and shall be no longer than is necessary to understand the environmental consequences of the alternatives, including the proposal.
 - E. EIS's shall be no longer than necessary to comply with SEPA and these rules. Length should relate first to potential environmental problems and then to the size or complexity of the alternatives, including the proposal.
 - F. The basic features and analysis of the proposal, alternatives, and impacts shall be discussed in the EIS and shall be generally understood without turning to other documents; however, an EIS is not required to include all information conceivably relevant to a proposal, and may be supplemented by appendices, reports, or other documents in the agency's record.
131. SMC 25.05.440.D.2 requires that an EIS describe the preferred alternative and alternative courses of action indicating that:
- Reasonable alternatives shall include actions that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation.

- a. The word "reasonable" is intended to limit the number and range of alternatives, as well as the amount of detailed analysis for each alternative.
 - b. The "no-action" alternative shall be evaluated and compared to other alternatives.
 - c. Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts either directly, or indirectly through requirement of mitigation measures.
132. SMC 25.05.440.D.2.f requires an EIS to “[p]resent a comparison of the environmental impacts of the reasonable alternatives and include the no-action alternative. Although graphics may be helpful, a matrix or chart is not required. A range of alternatives or a few representative alternatives, rather than every possible reasonable variation, may be discussed.”
133. SMC 25.05.440.E.6.a calls for economic issues to be included in every EIS, stating that the analysis shall include: “Economic factors, including but not limited to employment, public investment, and taxation where appropriate, provided that this section shall not authorize the City to require disclosure of financial information relating to the private applicant or the private applicant's proposal.”
134. SMC 25.05.442, Contents of EIS on Nonproject Proposals, states:
 - A. The lead agency shall have more flexibility in preparing EIS's on nonproject proposals, because there is normally less detailed information available on their environmental impacts and on any subsequent project proposals. The EIS may be combined with other planning documents.
 - B. The lead agency shall discuss impacts and alternatives in the level of detail appropriate to the scope of the nonproject proposal and to the level of planning for the proposal. Alternatives should be emphasized. In particular, agencies are encouraged to describe the proposal in terms of alternative means of accomplishing a stated objective (see Section 25.05.060 C). Alternatives including the proposed action should be analyzed at a roughly comparable level of detail, sufficient to evaluate their comparative merits (this does not require devoting the same number of pages in an EIS to each alternative).
 - C. If the nonproject proposal concerns a specific geographic area, site specific analyses are not required, but may be included for areas of specific concern. The EIS should identify subsequent actions that would be undertaken by other agencies as a result of the nonproject proposal, such as transportation and utility systems.

- D. The EIS's discussion of alternatives for a comprehensive plan, community plan, or other areawide zoning or for shoreline or land use plans shall be limited to a general discussion of the impacts of alternate proposals for policies contained in such plans, for land use or shoreline designations, and for implementation measures. The lead agency is not required under SEPA to examine all conceivable policies, designations, or implementation measures but should cover a range of such topics. The EIS content may be limited to a discussion of alternatives which have been formally proposed or which are, while not formally proposed, reasonably related to the proposed plan.

135. SMC 25.05.448, Relationship of EIS to Other Considerations, states in pertinent part:

- A. SEPA contemplates that the general welfare, social, economic, and other requirements and essential considerations of state policy will be taken into account in weighing and balancing alternatives and in making final decisions. However, the environmental impact statement is not required to evaluate and document all of the possible effects and considerations of a decision or to contain the balancing judgments that must ultimately be made by the decisionmakers. Rather, an environmental impact statement analyzes environmental impacts and must be used by agency decisionmakers, along with other relevant considerations or documents, in making final decisions on a proposal. The EIS provides a basis upon which the responsible agency and officials can make the balancing judgment mandated by SEPA, because it provides information on the environmental costs and impacts. SEPA does not require that an EIS be an agency's only decision-making document.
- B. The term "socioeconomic" is not used in the statute or in these rules because the term does not have a uniform meaning and has caused a great deal of uncertainty. Areas of urban environmental concern which must be considered are specified in RCW 43.21C.110(1)(f), the environmental checklist (Section 25.05.960) and Sections 25.05.440 and 25.05.444. (See Section 25.05.440 E6.)
- C. Examples of information that are not required to be discussed in an EIS are: Methods of financing proposals, economic competition, profits and personal income and wages, and social policy analysis such as fiscal and welfare policies and nonconstruction aspects of education and communications. EIS's may include whether housing is low, middle, or high income.

136. SMC 25.05.660.B states:

Decisionmakers should judge whether possible mitigation measures are likely to protect or enhance environmental quality. EISs should briefly indicate the intended environmental benefits of mitigation measures for significant impacts (Section 25.05.440 E). EISs are not required to analyze in detail the environmental impacts of mitigation measures, unless the mitigation measures:

1. Represent substantial changes in the proposal so that the proposal is likely to have significant adverse environmental impacts, or involve significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; and
2. Will not be analyzed in a subsequent environmental document prior to their implementation.

137. SMC 25.05.680, Appeals, states in pertinent part:

B. Decisions Not Related to Master Use Permits or Council Land Use Decisions

1. The following agency decisions on proposals not requiring a Master Use Permit shall be subject to appeal to the Hearing Examiner by any interested person as provided in this subsection:
 - a. Determination of Nonsignificance.
 - b. Adequacy of the final EIS as filed in the SEPA Public Information Center.
- ...
3. Appeals shall be considered de novo and limited to the issues cited in the notice of appeal. The determination appealed from shall be accorded substantial weight and the burden of establishing the contrary shall be upon the appealing party. The Hearing Examiner shall have authority to affirm or reverse the administrative decisions below, to remand cases to the appropriate department with directions for further proceedings, and to grant other appropriate relief in the circumstances. Within 15 days after the hearing, the Hearing Examiner shall file and transmit to the parties written findings of fact, conclusions of law, and a decision.

Conclusions

1. The Examiner has jurisdiction over this appeal pursuant to SMC Chapter 23.76. Appeals are considered de novo and the Examiner must give substantial weight to the Director's decision.¹⁵⁸ The Appellant bears the burden of proving that the FEIS is legally inadequate under the standards set by SEPA and interpreting case law.

¹⁵⁸ SMC 25.05.680.B.3.

2. EIS adequacy refers to the legal sufficiency of the environmental data contained in the impact statement.¹⁵⁹ The adequacy of an EIS is tested under a legal standard known as “the rule of reason.” For an EIS to be found adequate under this standard, the EIS must present decision makers with “a reasonably thorough discussion of the significant aspects of the probable environmental consequences of the agency’s decision.”¹⁶⁰ “An EIS is not required to be a compendium of every conceivable effect or alternative to a proposed project but is simply an aid to the decision making process.”¹⁶¹ It is judged on a case-by-case basis, considering “all of the policy and factual considerations reasonably related to SEPA’s terse directives.”¹⁶²
3. “In determining whether a particular discussion of environmental factors in an EIS is adequate under the rule of reason, the reviewing court must determine whether the environmental effects of the proposed action are sufficiently disclosed, discussed, and substantiated by supportive opinion and data.”¹⁶³
4. In an appeal of an FEIS “the decision of the governmental agency shall be accorded substantial weight.” RCW 43.21C.090.
5. “The requirement that only reasonable alternatives be discussed in an EIS is intended to limit the number of alternatives considered, as well as the detailed analysis required for each alternative. WAC 197-11-440(5)(b)(i). The discussion of alternatives in an EIS need not be exhaustive if the impact statement presents sufficient information for a reasoned choice of alternatives.”¹⁶⁴
6. Because many of the possible ADU policies are new and untested by any jurisdiction, the FEIS study of the potential impacts is by necessity based on a number of assumptions. Certainly, there are likely issues that could have been studied differently or in more detail in the document. That is not the question in this appeal. The question is whether the methodology employed by the FEIS is reasonable under the circumstances. While an Appellant can point out possible flaws, FEIS “analysis and its documentation are held to a standard not of perfection but reasonableness.”¹⁶⁵
7. The appeal centers on three issues: socioeconomic impacts, aesthetic impacts, and parking impacts. Each is considered below.

¹⁵⁹ *Klickitat Cy. Citizens Agst. Imp. Waste, et al., v. Klickitat County*, 122 Wn. 2d 619, 866 P.2d 1256 (1993).

¹⁶⁰ *Id.* (quoting *Trout Unlimited v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974)).

¹⁶¹ *Concerned Taxpayers Opposed to Modified Mid-South Sequim Bypass v. Washington St. Dept. of Transp.*, 90 Wn. App. 225, 230, 951 P.2d 812 (1998).

¹⁶² *Id.* at 229.

¹⁶³ *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 644, 860 P.2d 390 (1993).

¹⁶⁴ *Solid Waste Alternative Proponents v. Okanogan County*, 66 Wn.App. 439, 446, 832 P.2d 503 (1992).

¹⁶⁵ R. SETTLE, THE WASHINGTON STATE ENVIRONMENTAL POLICY ACT: A LEGAL AND POLICY ANALYSIS § 14.01[c] at 14-27 (2018).

Socioeconomic Impacts

8. Appellant presented three principal arguments through the testimony of William Reid regarding the adequacy of the FEIS in analyzing socioeconomic impacts, specifically affordability and displacement. Mr. Reid opined there are three major flaws in the document: 1) the FEIS lacks analysis of the geographic context of displacement using actual data to accurately determine impacts; 2) the economic models used in the FEIS provide an incomplete and inaccurate picture of the economic context, and therefore will not accurately predict the number ADU units that will be built; and 3) the parcel prototypes used in the models, specifying certain structure sizes on certain sized parcels, are inaccurate for neighborhoods in which there is greater displacement risk, and therefore inaccurately minimize teardown risk in those neighborhoods.¹⁶⁶
9. Mr. Reid's first argument is a disagreement on the methodology used and depth at which the FEIS examines the geography of displacement. While it is true that the FEIS could have targeted specific neighborhoods at risk for displacement in a manner similar to the parking analysis to provide an examination of actual neighborhoods in Seattle, there is no evidence in the record that such a study would provide a more accurate picture of displacement risk. As stated previously, the FEIS analysis is based on the 2016 Growth and Equity Analysis, which provides a geographic analysis of displacement risk throughout the city using spatial data and mapping. The mapping and other factors were the basis of categorizing neighborhoods as lower-priced, medium-priced, and higher-priced. All of the neighborhoods exhibiting a higher risk of displacement, with the exception of Beacon Hill, were categorized into the lower-priced neighborhood profile.
10. Mr. Reid stated that use of census tract data would be preferable, as it would actually identify lower-income households. This point was effectively rebutted by Mr. Welch, who stated that the census tracts are not indicative of a single-family neighborhood, per se, because almost all of the tracts include multiple zoning categories. Given this explanation, the FEIS's reliance on the 2016 Growth and Equity Analysis was an adequate basis on which to geographically review displacement risk. The Appellant has failed to meet its burden to prove that the FEIS is inadequate in this regard.
11. Another related issue is Mr. Reid's disagreement with the parcel methodology and his testimony concerning smaller structure sizes in areas of higher displacement risk. His testimony was not well substantiated and his site study in the Columbia City area was effectively rebutted by the testimony of Ms. Pennucci, who stated that at least part of the area in which the study was conducted was actually zoned multi-family and not part of the study area. While there may be some number of single-family parcels in the City that do not conform to the typology used in the FEIS, the Appellant has not shown that the typology and modeling used rendered inaccurate results; it only posited that there might be inaccurate results, based on a flawed study of a small area.

¹⁶⁶ Testimony of William Reid (March 25, 2019) at 43-46.

12. Mr. Reid's criticism of the RLV economic model was effectively rebutted by the testimony of Morgan Shook, who pointed out that the RLV inputs are the same as those for the return on cost model, advocated by Mr. Reid.¹⁶⁷ In addition, according to Mr. Shook, the intended purpose of the RLV model is to provide a method of holding variables as constant as possible to allow decisionmakers to understand the effects of a land use policy change. It is not intended to predict any specific landowner's cost or financing conditions.¹⁶⁸
13. Mr. Shook also rebutted Mr. Reid's vague criticism that the assumptions made in the forecast model were "arbitrary," in his opinion. Mr. Shook pointed to a detailed analysis of those assumptions in the technical appendix and the express acknowledgement by the FEIS that by necessity, a number of assumptions were made to provide outcomes from the forecast model.¹⁶⁹ Under the circumstances, and with no more than a conclusory criticism by Mr. Reid, the methodology used is adequate.
14. While there is a great deal of speculation on the part of Mr. Reid and other witnesses about displacement and affordability impacts that will result from the proposal, there has been no evidence offered that these results are likely to occur. For example, Appellant's witnesses all express the criticism that the FEIS underestimates the number of ADUs that will be built, but there is no clear methodology offered that would be preferable. In addition, although Appellant is concerned about condominiumization of single-family lots into multiple units, it has shown that phenomena is already occurring today, albeit on a very limited basis. There is no showing that two or three condominiumized units on a single-family lot would necessarily be priced higher than all units on the lot selling for one price. It is equally likely that condominiumization may make some units more affordable in single-family neighborhoods now otherwise priced out of reach for most buyers.
15. While the data on affordability and displacement risk in Seattle is certainly alarming, the Appellant has not shown that the FEIS is flawed in its disclosure and analysis of the potential impacts of this proposal on these issues. The FEIS presents a reasonably thorough discussion of the significant aspects of the probable environmental consequences of the proposal's potential socioeconomic impacts and acknowledges where assumptions were made. The socioeconomic effects of the proposed action are sufficiently disclosed, discussed, and substantiated by supportive opinion and data. The study in the FEIS is adequate to apprise policy makers of the possible impacts of the proposal. Appellant's claims on socioeconomic impacts should be dismissed.

Aesthetic Impacts

16. The City has done a very comprehensive job in attempting to model the possible impacts of this proposal from the standpoint of changes to landform. The extensive graphics contained in Chapter 4.3 of the FEIS provide a very credible sketch of possible outcomes

¹⁶⁷ Testimony of Morgan Shook (March 28, 2019) at 132-34.

¹⁶⁸ *Id.* at 137-38.

¹⁶⁹ *Id.* at 157-59.

as a result of this proposal, such that policy makers can make an informed decision understanding the possible environmental consequences to the land form of the proposed action. That is all that is required under the rule of reason test. In this case, the Examiner provides only a technical opinion concerning whether the document provides a reasonably thorough discussion of the significant aspects of the probable environmental consequences of the agency's decision. The Examiner's opinion does not address the substance of any consequences, only whether they were adequately disclosed and studied.

17. Mr. Kaplan testified that enactment of the Preferred Alternative could erase the single-family landform and turn single-family neighborhoods into "triplex neighborhoods."¹⁷⁰ The FEIS includes a sketch of just such a neighborhood; the full build-out scenario of the Preferred Alternative, which contains rows of large boxy buildings that fit the description of a triplex.¹⁷¹ While Mr. Kaplan's testimony is very compelling and he may very well be right, his arguments are policy arguments, which are not a basis for the Examiner to determine whether the FEIS was adequate.
18. Likewise, while the information presented concerning condominiumization was concerning, the FEIS does consider the sale option.¹⁷² The Appellant presented no evidence indicating that the sale price would be different if the dwelling units were sold as individual units, rather than as an entire package. In addition, the FEIS does acknowledge in the pro forma results that the for-sale option continues to be more lucrative than all of the other rental options.¹⁷³
19. Concerning the issue of whether the models should be real Seattle neighborhoods instead of the composite two-block area created as a hypothetical, based on the record it is impossible to say which would be the better approach. The City's method is credible, reasonable, and does provide examples of development on all of the parcel sizes concerned. If the City had used individual blocks from certain neighborhoods, the analysis could have easily missed some of the parcel sizes and different driveway configurations that can change the character of a lot. As stated above, an FEIS is not required to examine every conceivable effect. The FEIS provides an adequate discussion of aesthetic impacts for each alternative.¹⁷⁴ Appellant's claims on aesthetic impacts should be dismissed.

Tree Canopy Impacts

20. TreePAC argues that the FEIS fails to adequately address impacts to tree canopy. The arguments made within the scope of intervention are as follows: 1) the FEIS should be remanded to provide diagrams and illustrations within the FEIS that accurately depict the impact on tree canopies; 2) the FEIS should extend the study duration relative to the environmental impact of tree loss well beyond the current ten-year duration used by the FEIS; 3) the FEIS should be remanded to study tree-loss impact by neighborhood in a

¹⁷⁰ Testimony of Martin Kaplan (March 26, 2019) at 35-40.

¹⁷¹ FEIS at 4-138 (Exh. 4.3-37).

¹⁷² Id. at 4-23.

¹⁷³ Id. at 4-24 & A-59.

¹⁷⁴ Closing Statement from TreePAC at 6-19 (April 16, 2019).

similar fashion to that done in the 2016 LiDAR study prepared by the City; and 4) because the FEIS estimations on impacts to tree canopy cover appear to be inaccurate, the FEIS should be remanded to have an expert in tree canopy impacts in ADU construction provide an accurate assessment of potential canopy loss, along with provision of an accurate number of additional ADU units including detached and attached configurations for the no-action, ten-year, and full build-out scenarios.

21. With respect to the first issue, TreePAC requests that the case be remanded so that the drawings depicting the aesthetic impacts of height, bulk, and scale include realistic depictions of tree loss based on actual data. This request exceeds Hearing Examiner Tanner's order. The whole point of the rather bland-looking drawings in Chapter 4.3 was to accentuate, rather than hide, the height, bulk and scale impacts. Trying to layer tree information into these graphics would at least partially negate their effect. TreePAC has not met its burden to demonstrate that the requested relief should be granted.
22. TreePAC argues that the time period for analysis of impacts to trees should be longer, because environmental issues regarding tree loss can extend beyond ten years. According to TreePAC, trees can take eight to ten years to die because of construction impacts, root damage, etc. While that may be true, TreePAC has simply made this argument without any evidence to support it. Again, TreePAC has not met its burden to demonstrate that the requested relief should be granted.
23. TreePAC's remaining two arguments are based upon an assumed inaccuracy of the data collected to estimate the impacts of tree loss. The bases for this assumption are that 1) tree loss was not calculated neighborhood by neighborhood; 2) the result of 25 acres is intuitively inaccurate because that is only the size of three city blocks; and the 3) the calculation neglected to account for the three-foot area around a DADU that must be dug up for foundation and drainage installation and the requirements for stormwater retention that could be 200-300 square feet in size, according to Mr. Kaplan's testimony.
24. None of these assumptions of inaccuracy meets the standard for inadequacy of the information contained in the FEIS. There is no evidence in the record demonstrating the information is inaccurate, as it was based on the 2016 LiDAR data collected specifically on tree canopy.¹⁷⁵ While it is certainly true that the data collection could have been updated or enhanced in some way, it is adequate for purposes of the FEIS. Moreover, the method of estimating square footage of possible canopy loss estimated full build-out with an assumption that the entire area of construction was covered with tree canopy. These parameters resulted in a very conservative estimate of impacts that more than makes up for the lack of inclusion of stormwater retention areas or additional construction impacts. TreePAC has failed to meet its burden to demonstrate the FEIS was inadequate. Intervenor TreePAC's arguments on tree canopy impacts should be dismissed.

¹⁷⁵ FEIS at 4-52.

Parking Impacts

25. Appellant's expert witness Mr. Tilghman identified a number of discrepancies in the FEIS work that he opined significantly underestimated the parking impacts of the proposal. He stated that parking inventory was understated, the number of cars per single-family lot was understated because of the increase in unrelated people allowed per lot, and the FEIS failed to count projects in the pipeline.
26. Mr. Tilghman's critiques were rebutted, for the most part, by Ms. Leighton Cody. His counts of parking spaces were inaccurate in places, just as he asserted the FEIS counts were. Mr. Tilghman's measurement methods were called into question, just as the City's were. And the analysis gets to a level of detail that is beyond what is required for a nonproject FEIS. The City's detailed study of four neighborhoods is more than adequate to satisfy the reasonableness requirements for a nonproject EIS. "The lead agency shall discuss impacts and alternatives in the level of detail appropriate to the scope of the nonproject proposal . . ."¹⁷⁶ The FEIS provided a credible analysis of possible parking impacts from the proposal, based on a study of block faces in four affected neighborhoods geographically distributed around the city. Whether or not the counts were exactly right, they were a reasonable approximation of traffic and parking conditions over a widespread area.
27. Mr. Tilghman criticized the FEIS for not counting pipeline projects. Again, while pipeline projects might be important to count in a concurrency analysis for a project action, this FEIS focuses on a nonproject action that is citywide in single-family neighborhoods. That sort of precision and capture of a snapshot in time is unnecessary. Moreover, it would be quite difficult to gauge, as the Appellant would have the City measure possible spillover parking effects from projects that could be years from being completed, coupled with the fact that there is no way to know exactly where ADUs might be built. Such impacts are too speculative and remote, especially in the context of a nonproject FEIS.
28. Mr. Tilghman also criticized the FEIS assumption of one vehicle per ADU, especially when combined with the increase in the number of unrelated persons allowed on one lot, increasing from eight to 12. His analysis is that there would be up to nine cars per single-family lot, assuming 12 people lived on one single-family property. That criticism was effectively rebutted by Ms. Pennucci, who indicated that a number of other conservative assumptions in the study more than made up for the unlikely occurrence of actually having 12 unrelated people occupy one single-family lot.¹⁷⁷
29. Finally, Mr. Tilghman's criticisms of the mitigation measures proposed for parking impacts are not well founded. While he states that RPZs are primarily to keep nonresidents from parking for long periods of time to enjoy local attractions in the neighborhood, there is no specific evidence in the record that indicates whether the localized parking impacts discussed in the FEIS are caused by residents or nonresidents. Therefore, any claim that

¹⁷⁶ SMC 25.05.442.B.

¹⁷⁷ Testimony of Aly Pennucci (March 29, 2019) at 158-161.

this or other mitigation measures are ineffective is speculative at best. In addition, it is a level of detail beyond what is required in this nonproject FEIS.

30. The FEIS includes the level of detail appropriate to the scope of the proposal with regard to parking impacts.¹⁷⁸ The parking analysis does a credible job of pointing out areas with the potential to exceed the 85 percent threshold and discussing possible mitigation measures. Policy makers will be informed of the possible impacts resulting from the alternatives presented by the FEIS and possible mitigation. No more is required under the rule of reason analysis. Appellant's claims on parking impacts should be dismissed.

Other Impacts

31. Any other issues raised by the Appellant or the Intervenor did not meet the burden of proof and should be dismissed. Appellant's claims should be dismissed.

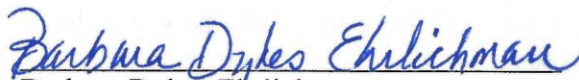
Summary

Given the groundbreaking nature of some of the features of the proposed legislation, it is impossible to know whether none, some, or all of the ill effects claimed by Appellant will come to pass. Under these circumstances, the FEIS presents a reasonably thorough analysis using conservative assumptions to provide as realistic a picture as possible for policy makers to consider as a part of the decision-making process. While the Appellant provided expert opinion that attempted to point to flaws in the assumptions and analysis of the FEIS, the City provided expert testimony that effectively rebutted the Appellant's witnesses. When presented with conflicting expert opinion on an issue, it is appropriate for the policy maker, and not the Examiner, to resolve those differences.¹⁷⁹ All of the expert witnesses presented at the hearing were credible and brought into sharp focus the policy debate that will occur during the City Council decision-making process. It is not up to the Examiner to take sides in that policy debate, but simply to assure that the requirements of SEPA have been fulfilled. The Examiner concludes that the City has made a thorough and commendable effort to provide necessary information to policy makers regarding the potential impacts of the proposal.

Decision

The Examiner determines that the FEIS is **ADEQUATE**. The Appellant's and the Intervenor's claims and arguments are **DISMISSED**.

Entered this 13th day of May, 2019.


Barbara Dykes Ehrlichman
Deputy Hearing Examiner

¹⁷⁸ SMC 25.05.442.A & B; WAC 197-11-442.A.

¹⁷⁹ See *Des Moines v. Puget Sound Reg. Coun.*, 108 Wn. App. 836, 852, 988 P.2d 27, 37 (1999).

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources of authority to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 43.21C.075, any judicial appeal of this decision must be consolidated with an appeal of the underlying governmental action of the Seattle City Council.

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Order on City Motion to Strike & Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **Queen Anne Community Council**, Hearing Examiner File: **W-18-009**, in the manner indicated.

Party	Method of Service
Appellant Legal Counsel Jeffrey Eustis eustislaw@comcast.net	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
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Dated: May 13, 2019



Alayna Johnson
Legal Assistant